Petition

Office-Supreme Court, U.S.
FILED
AUG 3 1981
ALEXANDER L. STEVAS,
CLERK

81-222

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NO. _____

COASTAL STATES GAS PRODUCING CO.,
Petitioner

VERSUS

SOHYDE DRILLING & WORKOVER, INC., and MARKET INSURANCE CO.
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Benjamin R. Slater, Jr.
William J. Hamlin
MONROE & LEMANN
1424 Whitney Building
New Orleans, Louisiana
Telephone: (504) 586-1900
ATTORNEYS FOR PETITIONER

HAUSER PRINTING COMPANY, INC., 623 DISTRIBUTORS ROW, HARAHAN, LA. 70123

QUESTIONS PRESENTED

For admiralty jurisdiction to exist under the Admiralty Extension Act over tort claims for damages caused by vessels on navigable waters, is it necessary that the wrong bear a substantial relationship to traditional maritime activities?

Does general admiralty jurisdiction over tort claims for damages caused by vessels on navigable waters require that the wrong bear a substantial relationship to traditional maritime activities?

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
TABLE OF CASES AND OTHER AUTHORITIES	iii
OPINIONS BELOW	2
JURISDICTION	2
STATUTE INVOLVED	2
STATEMENT OF THE CASE	2
History of the Litigation and Course of Proceedings	2
Disposition in District Court	2
Disposition in the Court of Appeals	4
Facts Material to the Question Presented	5
REASONS FOR GRANTING THE WRIT	6
I. THE COURT OF APPEALS UNDULY RESTRICTED JURISDICTION UNDER THE ADMIRALTY EXTENSION ACT	7
A. The Court of Appeals Improperly Applied *Executive Jet* to Jurisdiction Under the Admiralty Extension Act	7
B. The Decision Below Creates the Inequity That The Admiralty Extension Act Was Designed to Remedy	14

II. THE DECISION OF THE COURT OF APPEALS MISINTERPRETED THIS COURT'S RULING IN *EXECUTIVE JET* 17
A. The Court of Appeals Improperly Extended The *Executive Jet* Rule Beyond Aviation Cases 18
B. The Court of Appeals Incorrectly Restricted *Texas Company v. Gianfala* to Jones Act Cases 22

III. THE COURT OF APPEALS' DECISION CREATES AN IRRECONCILABLE SPLIT IN THE CIRCUITS ON THE QUESTION OF JURISDICTION UNDER THE ADMIRALTY EXTENSION ACT 27
CONCLUSION 28

TABLE OF CASES AND OTHER AUTHORITIES

PAGE

Executive Jet Aviation, Inc. v. Cleveland
409 U.S. 249, 6, 7, 8, 9, 10, 11, 12, 13,
93 S.Ct. 493 (1972) 17, 18, 19, 20, 21, 23,

Gebhard v. S. S. Hawaiian Legislator,
425 F.2d 1303 (9th Cir. 1970) 7, 12, 27

Gutierrez v. Waterman Steamship Corp.,
373 U.S. 206, 83 S.Ct. 1185 (1963) 10

Norton v. Warner Co.,
321 U.S. 565, 64 S. Ct. 747 (1944) 25

Offshore v. Robison,
266 F.2d 769 (5th Cir. 1959) 25, 26

St. Hilaire Moye v. Henderson,
496 F.2d 973 (8th Cir. 1974), *cert. denied,*
419 U.S. 884, 95 S.Ct. 151 .....7, 11, 21, 27

Sperry Rand Corp. v. Radio Corporation of America, 618 F.2d 319 (5th Cir. 1980) 16

Terra Resources, Inc. v. Atchafalaya Workover Contractors, 1980 A.M.C. 1082 (E.D.La. 1978) 26, 27

Texas Company v. Gianfala,
350 U.S. 879, 7, 22, 23,
76 S.Ct. 141 (1955) 24, 25, 27

PAGE

Transcontinental Gas Pipe Line Corp. v. Mobil Drilling Barge and Signal Oil and Gas Company v. Ocean Drilling and Exploration Co., 424 F.2d 684 (5th Cir. 1970), *cert. denied* 400 U.S. 832 26

Victory Carriers, Inc. v. Law, 404 U.S. 202, 92 S.Ct. 418 (1971) 10

OTHER AUTHORITIES:

Admiralty Extension Act, 46 U.S.C. §740 ..... 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 23, 27

Death on the High Seas Act, 46 U.S.C. §761 ..... 13, 14

Federal Rules of Civil Procedure 3, 8

Jones Act 3, 15, 17, 22, 23, 24

1 U.S.C. 3 25

U.S. Code Cong. Service (Legislative History of Admiralty Extension Act) 8, 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NO.

COASTAL STATES GAS PRODUCING CO.,
Petitioner

VERSUS

SOHYDE DRILLING & WORKOVER, INC., and MARKET INSURANCE CO.
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Coastal States Gas Producting Co., respectfully petitions for a Writ of Certiorari to review the May 14, 1981 decision of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit in *Sohyde Drilling & Marine Co., et al. v. Coastal States Gas Producing Co. v. Sohyde Drilling & Workover, Inc., et al.* has not yet been reported. It appears as Appendix C, Appendix page 17. The Findings of Fact and Conclusions of Law issued by the District Court are unreported. They appear as Appendix A, Appendix page 1.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The Admiralty Extension Act, 46 USC 740, provides as follows:

> The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

STATEMENT OF THE CASE

History of the Litigation and Course of Proceedings

Civil Action #72-1856 involved extensive property damage claims resulting from a high pressure offshore gas well blowout that occurred on July 13, 1971. Coast-

al States Gas Producing Company (hereafter "Coastal States") as the operator of the gas well, entered into a contract with Sohyde Drilling and Workover Company ("Sohyde") pursuant to which the latter undertook to furnish a crewboat, drilling barge, and crew to conduct workover operations on the well. The drilling barge used in connection with the workover operations was chartered to Sohyde and owned by Sohyde Drilling and Marine Company.

Sohyde Marine instituted Civil Action #72-1856 against Coastal States seeking recovery of property damages to the barge and equipment, asserting jurisdiction under the general maritime law, pursuant to Rule 9(h) of the Federal Rules of Civil Procedure. Coastal States filed a counter-claim and a third party demand against Sohyde and its insurers (Market Insurance Company and Employers Surplus Lines Insurance Company) seeking recovery of extensive damages it sustained in the blowout, likewise asserting admiralty jurisdiction pursuant to Rule 9(h).

Civil Action 72-1856 was later consolidated with Civil Action 73-3228, the latter involving a Jones Act claim arising out of the blowout. Immediately prior to trial, all claims were settled with the exception of those filed by Coastal States.

Disposition in District Court

Following the trial on liability, the District Court entered findings of fact and conclusions of law apportioning seventy-five percent (75%) of the fault of the blowout to Sohyde and twenty-five percent (25%) to Coastal States (Appendix page 14). The Court concluded that it had admiralty jurisdiction.

Following the trial on damages, the District Court

handed down findings of fact and conclusions of law reflecting the damage sustained by Coastal States and concluding that insurance policies issued by Market and Employers covered Sohyde's liability. The Court entered final judgment on July 10, 1978 in favor of Coastal States and against Sohyde, Market and Employers in the amount of $1,761,898.74 plus interest and costs (Appendix page 15). The judgment was apportioned tween Market and Employers to reflect the extent of coverage of their respective insurance policies. Market filed an appeal on its own behalf and on behalf of Sohyde limited solely to that portion of the judgment apportioned to Market. Employers settled and filed no appeal.

Disposition in the Court of Appeal

On May 14, 1981, the Court of Appeals for the Fifth Circuit vacated the District Court's judgment (Appendix page 17). The Court of Appeals ruled that the Admiralty Extension Act was the only possible source for admiralty jurisdiction, that the activities taking place at the time of the blowout were not substantially related to traditional maritime activities, which it said was the appropriate test for jurisdiction under the Admiralty Extension Act, and that accordingly the District Court had no admiralty jurisdiction over Coastal States' claim.

On June 23, 1981, the Court of Appeals denied Coastal States' Petition for Rehearing and Suggestion for Rehearing *En Banc* (Appendix page 34). On Motion of Coastal States, the Mandate was stayed pending the filing of this Petition.

Facts Material To the Question Presented

The District Court fact findings are not disputed. Many are important to the issues presented concerning admiralty jurisdiction.

On July 7, 1971, Coastal States entered into a contract with Sohyde pursuant to which Sohyde would furnish a drilling barge, a crewboat and crew needed to perform workover operations on Coastal's well.[1/] Sohyde moved its rig and crews on location, and workover procedures commenced.

The well in question, designated the Edna Delcambre #4, was originally completed by Coastal States in 1969.[2/] This well was located six miles south of Delcambre, Louisiana in approximately eight feet of water, and was situated in a navigable canal that was some 320 feet in width. The canal is connected to the Intracoastal Waterway and Vermillion Bay by other navigable canals.[3/]

The only method of getting to this well was by marine transportation, such as barges and crewboats, or by seaplane. The nearest solid ground to this well was a landing area some two miles away.[4/] The record below shows that 110 foot cargo barges and 150 to 300 horsepower tugboats were used to transfer supplies and materials to the location and that oil produced from this well was transferred to cargo barges at the site, sold to interstate oil markets and transported from the location on commercial oil barges.

The blowout occurred as a result of the negligence of the crew members of the Sohyde barge during the

---

1/ Appendix page 4, Finding of Fact #5.
2/ Appendix page 3, Findings of Fact #3.
3/ Appendix page 3, Finding of Fact #3.
4/ Appendix page 3, Finding of Fact #3.

performance of that vessel's mission, and the failure of the vessel's equipment.[5/] Coastal States' negligence, largely its failure to watch the Sohyde crew, was found to have contributed to the blowout.[6/]

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals for the Fifth Circuit, if permitted to stand, will destroy many rights that heretofore were plainly laid in admiralty. It will seriously affect, by substantial reduction thereof, the admiralty jurisdiction of the federal courts that heretofore has existed. In short, if it is permitted to stand, the federal courts will be divested of jurisdiction over many claims for damages caused by negligent acts of seamen during their performance of missions of vessels located on navigable waters, or by defects in a vessel's appurtenances, and injured parties will be relegated to their respective remedies as they exist under the varied state laws.

In *Executive Jet Aviation Inc. v. Cleveland,* 409 U.S. 249, 93 S.Ct. 493 (1972), this Court held that maritime locality alone is not a sufficient predicate for admiralty jurisdiction in aviation tort cases, 409 U.S. 261, and ruled that there must also exist a substantial relationship between the wrong and traditional maritime activities. 409 U.S. 268. In the instant case the Court of Appeals has read into the clear and unambiguous provisions of the Admiralty Extension Act,[7/] which simply requires damage caused by a vessel on navigable wa-

---

5/ Appendix pages 17-21, Finding of Fact #15, #18, #20 and #24.
6/ Appendix page 22, Finding of Fact #26.
7/ 46 U.S.C. §740.

ters for admiralty jurisdiction to attach, the additional requirement that there exist a substantial relationship between the wrong and traditional maritime activities. Further, the Court of Appeals erred (1) in concluding that actions of seamen engaged in the mission of a vessel on navigable waters, and defects in the vessel's appurtenances, do not consitute traditional maritime activities, (2) in applying the *Executive Jet* rule beyond aviation cases to matters of an obvious maritime nature, and (3) in unduly restricting this Court's ruling in *Texas Company v. Gianfala,* 350 U.S. 879, 76 S.Ct. 141 (1955), to Jones Act cases.

The decision below creates a direct and irreconcilable conflict between circuit court rulings on admiralty jurisdiction under the Admiralty Extension Act; see *St. Hilaire Moye v. Henderson,* 496 F.2d 973 (8th Cir. 1974), *cert. denied,* 419 U.S. 884, 95 S.Ct. 151, and *Gebhard v. SS Hawaiian Legislator,* 425 F.2d 1303 (9th Cir. 1970).

For these reasons, we urge this Court to issue a Writ of Certiorari to the Court of Appeals for the Fifth Circuit, to reverse that Court's decision below and to remand the matter to the District Court with instructions that its Judgment be reinstated.

I.
THE COURT OF APPEALS UNDULY RESTRICTED JURISDICTION UNDER THE ADMIRALTY EXTENSION ACT

A. The Court of Appeals Improperly Applied Executive Jet To Jurisdiction Under the Admiralty Extension Act

In the District Court, Coastal States asserted

admiralty jurisdiction under the general maritime law, Rule 9(h) of the Federal Rules of Civil Procedure. The Court of Appeals concluded that under the facts of this case, if admiralty jurisdiction was to be found its source must be the Admiralty Extension Act. (Appendix page 22.) It thus declined to consider admiralty jurisdiction under the general maritime law, but the result would have been the same since the jurisdiction rule enunciated in *Executive Jet v. Cleveland* was applied to determine jurisdiction under the Act.

The Court should review the Court of Appeals' application of the *Executive Jet* rule as that rule is wholly inapplicable to jurisdiction under the Act. The legislative history, in defining the purpose of the bill, states unambiguously that:

> The bill would provide for the extension of admiralty and maritime jurisdiction *to all cases of damage or injury, to person or property caused by a vessel on navigable water,* notwithstanding that such damage or injury be done or consummated on land. U.S. Code Cong. Service, p. 1899 (emphasis added).

The statute itself directs that:

> The admiralty and maritime jurisdiction of the United States *shall* extend to and include *all* cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land. (Emphasis added.)

The Act simply does not say that jurisdiction shall not attach unless at the time of the wrong the vessel was performing functions substantially related to maritime

activities.

Applying the *Executive Jet* rule to jurisdiction under the Act, the Court of Appeals said:

> We find support for our conclusion that the *Executive Jet* rule constrains the Admiralty Extension Act in the legislative history of the Act itself. The legislative history makes clear that the purpose of the Act was to correct the inequities, and anomalies, arising under then existing law which extended admiralty jurisdiction *only* to those cases in which injury was actually done or consummated upon navigable waters. Appendix page 24. (Emphasis added.)

Thus, even though it recognized that jurisdiction was determined solely on the basis of maritime locality before the Act was passed, its decision adds a dimension to the Act. In other words, the Court of Appeals reads into the Act a Congressional purpose to not only extend jurisdiction shoreward, *provided a vessel on navigable waters is involved,* but also to deny jurisdiction in cases that previously met the maritime locality test unless they bear a substantial relationship to traditional maritime activities, *even if a vessel on navigable waters is involved.*

The Court of Appeals conceded that "Under the express terms of the Act, our jurisdictional inquiry on appeal would seem to be limited to whether the Sohyde 28 was a 'vessel' and whether it was on 'navigable water' at the time it caused the property damage in question" (Appendix page 23), but went on to say that "We believe that there is a more fundamental inquiry which confronts us — that is, whether the wrong asserted in the instant action bears a significant relation-

ship to maritime activity. In short, we believe, the seemingly unequivocal language of the Act notwithstanding, that 'vessel' plus 'navigable water' does not necessarily equal admiralty jurisdiction under the Act" (Appendix page 23).

Reviewing the factors it considered relevant to jurisdiction,[8/] the Court of Appeals took great pains to distinguish when a vessel is really a vessel, and then treated with considerable significance the *functions* of the parties, pointing out that Coastal States' function was to obtain production and Sohyde's function was to perform workover operations (Appendix page 26). It concluded that "The *functions* and roles of these parties was hardly of a peculiarly maritime nature." (Appendix page 27.) The Court also found significant the fact that the instrumentalities involved were the same as those involved in a land-based operation (Appendix page 28).

The Court of Appeals' decision thus hinges largely on the sort of work that was taking place on the barge at the time of the blowout, which *simply is not the test for jurisdiction under the Admiralty Extension Act.* For example, in *Victory Carriers, Inc. v. Law,* 404 U.S. 202, 210, 92 S.Ct 418, (1971), the Court referring to *Gutierrez v. Waterman SS Corp.,* 373 U.S. 206, 83 S.Ct. 1185 (1963), where jurisdiction was found under the Act even though the plaintiff was a longshoreman injured a pier, explained:

> And in *Gutierrez, supra,* federal admiralty jurisdiction was clearly present since the Admiralty Ex-

8/ The relevant factors considered by the Fifth Circuit were (1) the functions and roles of the parties, (2) the types of vehicles and instrumentalities involved, (3) the causation and type of injury, and (4) traditional concepts of the role of admiralty law (Appendix page 26).

> tension Act *on its face* reached the injury there involved. The decision in *Gutierrez* turned, *not on the 'function' the stevedore was performing at the time of his injury,* but, rather, *upon the fact that his injury was caused by an appurtenance of a ship,* the defective cargo containers, which the Court held to be an 'injury, to person ... caused by a vessel on navigable water' which was consummated ashore under 46 U.S.C. 740. (Emphasis added.)

The Court of Appeals for the Eighth Circuit was faced with the same question in the post-*Executive Jet* case of *St. Hilaire Moye v. Henderson,* 496 F.2d 973 (8th Cir. 1974), *cert. denied,* 419 U.S. 884, 95 S.Ct. 151, and reached a conclusion contrary to that of the Fifth Circuit. *Henderson* involved a suit for personal injuries arising out of a pleasure boat accident on the Arkansas River. The District Judge held that the case was clearly within the court's admiralty jurisdiction because the accident happened on navigable waters and "directly resulted from the operation of a boat which is certainly a traditional maritime activity." 496 F.2d 973.

In affirming, the Eighth Circuit commented on the role *Executive Jet* played in admiralty jurisdiction and said that:

> The use of a water-borne vessel on navigable waters presents a case falling appropriately within the historical scope and design of the law of admiralty. 496 F.2d at 979.

However, the Eighth Circuit went much further; citing the Admiralty Extension Act, it said:

> In addition to the holding that the law of admiralty extends to the operation of all waterborne vessels

on navigable waters, admiralty jurisdiction may be applicable under express statutory provision. The Extension of Admiralty Jursidiction Act, 46 U.S.C. §740, provides in part: "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." The purpose of this legislation was to extend the law of admiralty to encompass claims arising out of a relationship to maritime activities, regardless of the locality of the tort. *Executive Jet, supra,* at 260. *However, the language of the statute is written in the broadest terms to cover all damage "caused by a vessel on navigable water." All that is required for the Act to come into involvement is injury caused by a vessel on navigable waters.* ... As mentioned previously, statutory definitions of vessel do not limit the term to commercial boats, but cover any waterborne transportation device.

We affirm Judge Henley's holding that the operation of a boat on navigable waters, no matter what its size or activity, is a traditional maritime activity to which the admiralty jurisdiction of the federal courts may extend. The Extension of Admiralty Jurisdiction Act, 46 U.S.C. §740, *provides an additional basis for the exercise of admiralty jurisdiction* in this case. 496 F.2d at 979 (emphasis added).

Similarly, in the pre-*Executive Jet* decision of *Gebhard v. SS Hawaiian Legislator,* 425 F.2d 1303 (9th Cir. 1970), the Court of Appeals for the Ninth Circuit,

speaking of the Admiralty Extension Act, said at 1307:

> We think the latter is the proper construction. The Act *by its terms* applies to "all cases" where the injury is "caused by a vessel on navigable water." *It imposes no other requirements. On its face,* therefore, the Act seems to base jurisdiction not on the character of the parties, as in diversity, but on the nature of the facts giving rise to the cause. And in view of the savings of time and money — both to litigants and to the courts — that result from consolidation in one action of all claims arising out of a single injury, *we see no reason why we should depart from the literal meaning of the Act.* (Emphasis added.)

Assuming *arguendo* that no maritime relationship existed under the facts surrounding the well blowout, petitioner submits that the Admiralty Extension Act is clear on its face and requires only that damages be caused by a vessel on navigable waters. If the Sohyde drilling barge had completed workover operations and was transporting the drilling rig from Coastal States' well site to another well site and collided with a bridge, the bridge owner could clearly sue in admiralty. The fact that the incident here fortuitously occurred while the barge was performing its intended function at a well site in navigable waters cannot be a deciding factor.

Similar specific federal statutes have been construed to grant admiralty jurisdiction even in the absence of a maritime relationship. For example, in *Executive Jet* this Court observed that the first major extension of admiralty jurisdiction in death actions arose under the Death on the High Seas Act, 46 U.S.C. 761, and that the federal courts took jurisdiction of such

cases *"because the literal provisions of that statute appeared to be clearly applicable"* 409 U.S. at 262 (Emphasis added). Citing the many decisions upholding federal jurisdiction for wrongful death arising out of aircraft crashes beyond one marine league, the Court said "Indeed, it may be considered as settled today that *this specific federal statute* gives the federal admiralty courts jurisdiction of such wrongful-death actions." 409 U.S. at 263, 264 (Emphasis added).

Hence, under that Act there is no requirement of a maritime relationship, *even in an aviation context*, because of its literal interpretation. The Admiralty Extension Act is no less clear than that Act. There is nothing in the legislative history of the Death on the High Seas Act[9] that makes jurisdiction there any less restrictive than under the Admiralty Extension Act.

In conclusion, although the activities engaged in by Sohyde in the present case have been accepted as traditional maritime activities for decades, jurisdiction under the Admiralty Extension Act requires nothing more than what the District Court found: damages caused by a vessel on navigable waters.

B. The Decision Below Creates the Inequity That the Admiralty Extension Act Was Designed to Remedy

The Legislative History of the Admiralty Extension Act, U.S. Code Cong. Service pages 1898, 1899 (1948), in describing the reasons behind passage of the Act, provides in part as follows:

As a result of the denial of admiralty jurisdiction in

9/ The Death on the High Seas Act was passed in 1920, 28 years before the Admiralty Extension Act.

> cases where injury is done on land, when a vessel collides with a bridge through mutual fault and both are damaged, under existing law the owner of the bridge, being denied a remedy in admiralty, is barred by contributory negligence from any recovery in an action at law. But the owner of the vessel may by a suit in admiralty recover half damages from the bridge, contributory negligence operating merely to reduce the recovery. Further, where a collision between a vessel and a land structure is caused by the fault of a compulsory pilot, the owner of the land structure is without remedy for his injuries since at law a compulsory pilot is not deemed the servant of the vessel's master or owner. *Homer Ramsdell Transportation Co. v. Compagnie Generale Transatlantique* (182 U.S. 406, 416). But if the vessel sheers off the land structure to collide with another vessel in the vicinity, the owner of the second vessel, by an *in rem* proceeding in admiralty, may recover full damages, for the wrong is viewed as that of the vessel itself and compulsory pilotage is no defense. *The China* (74 U.S. 53, 68). *The bill under consideration would correct these inequities as a result of providing that the admiralty courts shall take cognizance of all of them.* (Emphasis added.)

Hence, the very purpose of the Act was to eliminate inequities whereby remedies, arising out of the same incident, are determined under different laws. That inequity is precisely what the Court of Appeals created below.

The Court of Appeals' opinion observes that all of the other claims arising out of the blowout were settled prior to trial (Appendix page 21). Those included Jones

Act claims and maritime claims by Sohyde, among others, for damages to its drilling barge. The Court of Appeals said that there is little doubt that if the present action were one for personal injuries under maritime law or the Jones Act the Sohyde vessel would be a vessel (Appendix page 27). Obviously, admiralty principles would apply to such a claim.

There also seems little doubt that the Fifth Circuit would have applied admiralty jurisdiction and maritime principles to Sohyde's claim for damages to its vessel, in accord with *Sperry Rand Corp. v. Radio Corporation of America*, 618 F.2d 319 (5th Cir. 1980). In *Sperry Rand* a vessel owner sued the steering system manufacturer for property damage resulting from a defect in the vessel's steering system. The manufacturer settled and in turn sued the component part manufacturer. The case was dismissed for lack of admiralty jurisdiction because, said the trial court, there was an insufficient relationship to traditional maritime activities. Reversing the trial court, the Fifth Circuit said:

> However, the defendants cannot cite one case where the requirement of 'significant relationship to traditional maritime activity', added by *Executive Jet*, was not satisfied by the sinking of, *or inflicting of damage upon, a marine vessel on navigable waters.* Indeed, all of the pertinent cases before and since *Executive Jet* have held that, *so long as the place of injury to a vessel occurs upon navigable waters,* the fact that the negligent act may have occurred on shore is of no relevance. 618 F.2d at 321 (emphasis added).

Even though the Court of Appeals specifically recognized that the 'Admiralty Extension Act was intend-

ed to eliminate the inequities, and anomalies, resulting from the strict application of the locality rule' (Appendix page 24), it has created the very situation the legislative history shows that the Admiralty Extension Act was designed to remedy.[10/] Had the other parties not settled, the Jones Act claims and Sohyde's claim for property damage to its barge would have been decided under maritime principles, while Coastal States' property damage claim, governed by Louisiana law, would be barred completely by a finding of contributory negligence.

II.

THE DECISION OF THE COURT OF APPEALS MISINTERPRETED THIS COURT'S RULING IN *EXECUTIVE JET*

There are other fundamental issues that should be considered by this Court, including (1) the Court of Appeals' effective reversal of the District Court's findings relating to admiralty jurisdiction, (2) its extension of the *Executive Jet* jurisdictional rule under the general maritime law beyond aviation cases to situations where damages are caused by vessels on navigable waters, and (3) its determination that facts such as those present here do not bear a sufficient relationship to traditional maritime activities to confer admiralty jurisdiction on the federal courts.

The undisputed findings of the District Court are

10/For some reason, the Court of Appeals found the nature of Coastal States' damages important to its decision, saying that "The injury occasioned in this case was *merely* a well blowout with attendant property damage and loss." (Appendix page 29.) Presumably it would have viewed the matter differently had the property damage claim in question been related to Sohyde's barge instead of Coastal's well.

extremely important to these issues, and a few of them bear repeating here. Most significant are the findings that the Sohyde drilling barge was indeed a vessel and that the accident occurred on navigable waters[11/]. The barge was situated in a navigable canal, accessible solely by marine transportation such as barges and crewboats or seaplanes, with the nearest solid ground two miles away.[12/] The blowout, and extensive property damage sustained by Coastal States, was caused by the negligence of the Sohyde crew while using the vessel's equipment[13/] and by defects in the vessel's equipment.[14/]

A. The Court of Appeals Improperly Extended The *Executive Jet* Rule Beyond Aviation Cases

The Court of Appeals' extension of the *Executive Jet* test beyond its facts resulted from a misinterpretation of that decision. The opinion in *Executive Jet* seems to make an extraordinary effort to confine, to aviation cases, or at least to fortuitous events similarly displaced from admiralty, the requirement that there be a substantial relationship between the wrong and traditional maritime activities.

The specific question presented in *Executive Jet* was "...whether the petitioner's suit for property dam-

11/ Appendix page 13, conclusion no. 1.
12/ Appendix page 3, finding no. 3.
13/ Appendix page 7, finding nos. 15-20.
14/ Appendix page 10, finding nos. 22-24.

age *to the aircraft* allegedly caused by the respondent's negligence lies within federal admiralty jurisdiction." 409 U.S. at 250. The Court first discussed the historical development of the strict locality test for maritime tort jurisdiction, and observed that "This locality test, of course, was established and grew up in an era when it was difficult to conceive of a tortious occurrence on navigable waters other than in connection with a water borne vessel. Indeed, for the traditional types of maritime torts, *the traditional test has worked quite satisfactorily.*" 409 U.S. at 254 (emphasis added).

The Court went on to discuss difficulties with the strict locality test, using for illustrative purposes the case of the injured swimmer at a public beach and the water damaged machinery dropped into a harbor by a land-based crane, and noted the dichotomy of jurisdictional views expressed by the lower courts. Pointing out that it had never explicitly held that a maritime locality is the *sole* test of jurisdiction, 409 at 258, the Court observed that "one area in which locality as the exclusive test of admiralty tort jurisdiction has given rise to serious problems in application is that of *aviation.* For the reasons discussed above and those to be discussed we have concluded that maritime locality alone is not a sufficient predicate for admiralty jurisdiction *in aviation tort cases.*" 409 U.S. at 261 (emphasis added).

Throughout the remainder of the Court's opinion, the significance of the aviation context of the case was made clear. After discussing earlier airplane cases the Court said that "Airplanes, *unlike water-borne vessels,* are not limited by physical boundaries and can and do operate over both land and navigable bodies of water." 409 U.S. at 265 (emphasis added). The Court cited Professor Moore and Professor Pelaez, who said that "...it is evident that while distinctions based on locality often

are in fact quite relevant *where water vessels are concerned,* they entirely lose their significance where aircraft, which are not geographically restrained, are concerned." 409 U.S. at 266 (emphasis added).

Noting that insofar as flights within the continental United States are concerned the fact that an aircraft happens to fall on navigable waters rather than land is wholly fortuitous, and that it is sometimes impossible to determine whether the locality of an airplane tort was over land or over water, the Court said, in what seems to be the clearest expression of the real basis of the decision:

> All these and other difficulties that can arise in attempting to apply the locality test of admiralty jurisdiction *to aeronautical torts* are, of course, attributable to the inherent nature of aircraft. *Unlike waterborne vessels,* they are not restrained by one-dimensional geographic and physical boundaries. *For this elementary reason,* we conclude that the mere fact that the alleged wrong "occurs" or "is located" on or over navigable waters — *whatever that means in an aviation context* — is not of itself sufficient to turn an airplane negligence case into a "maritime tort." It is far more consistent with the history and purpose of admiralty to require also that the wrong bear a significant relationship to traditional maritime activity. We hold that unless such a relationship exists, *claims arising from airplane accidents* are not cognizable in admiralty in the absence of legislation to the contrary. 409 U.S. at 268 (emphasis added).

In conclusion, the Court suggested that Congress is the proper source for a uniform law in aviation cases:

> It may be, as the petitioners argue, that aviation tort cases should be governed by uniform substantive and procedural laws, and that such actions should be heard in the federal courts so as to avoid divergent results and duplicitous litigation in multi-party cases. But for this Court to uphold federal admiralty jurisdiction *in a few wholly fortuitous aircraft cases* would be a most quixotic way of approaching that goal. If federal uniformity is the desired goal with respect to claims arising from aviation accidents, Congress is free under the Commerce Clause to enact legislation applicable to all such accidents, whether occurring on land or water, and adapted to the specific characteristics of air commerce.
>
> For the reasons stated in this opinion we hold that, in the absence of legislation to the contrary, *there is no federal admiralty jurisdiction over aviation tort claims arising from flights by land-based aircraft between points within the continental United States.* 409 U.S. at 273, 274 (emphasis added).

Although the Court's discussion of the historical development of the strict locality test for maritime tort jurisdiction, and the difficulties in its modern day application, may leave room for the interpretation that more was at issue in *Executive Jet* than just aviation cases,[15/] nothing in the decision suggests an intent to extend the test to matters involving commercial vessels on navi-

---

15/ However, the Court of Appeal for the Eighth Circuit, in *St. Hilaire Moye v. Henderson*, 496 F.2d 973 (8th Cir. 1974), *cert. denied*, 419 U.S. 884, 95 S.Ct. 151, said that "A close reading of the *Executive Jet* decision would support an interpretation limiting its holding to situations involving aircraft. Justice Stewart extensively discussed the differences *between aircraft and waterborne vessels*, ... and that was the essential basis for the Court's holding. Justice Stewart explicitly limited the rejection of the locality test to aviation tort cases." 496 F.2d at 978 (emphasis added).

gable waters. There is nothing to suggest an intent that the test be applied to deny the federal courts admiralty jurisdiction over claims arising out of damages caused by such vessels or negligent acts committed by crews during the performance of their missions. There was nothing fortuitous about the presence of the Sohyde vessel on navigable waters; through no fortuitous event did the vessel's crew and the vessel's equipment cause the blowout and resulting damages.

B. The Court of Appeals Incorrectly Restricted *Texas Company v. Gianfala* to Jones Act Cases

The Court of Appeals effectively reversed the trial court's findings relating to admiralty jurisdiction in conflict with *Texas Company v. Gianfala, supra.* Though the facts in *Gianfala* surrounded a personal injury claim rather than one for property damages, that hardly creates a valid distinction by which admiralty jurisdiction can be recognized on the one hand while relegating the parties to state law on the other. In *Gianfala,* Oscar Martin was in charge of a drilling crew aboard a submersed drilling barge, which had been sunk to the bottom of navigable waters and was used in drilling for oil. He was killed while moving drill pipe and his representative filed suit under the Jones Act claiming he was a seaman and member of the crew of the drilling barge. The District Court denied the defendant's motion for directed verdict on the status of the deceased as a seaman. On appeal from a jury verdict for the plaintiff, the Fifth Circuit reversed the trial court, stated that it had submitted a question of law to the jury, and held:

> When the accident, on which this suit is based, took place, the vessel was not in navigation, nor was

> Martin aboard it in the aid of navigation. On the contrary he was aboard it, *not as a member of a ship's crew* but *as a member of a drilling crew*. He was then and there doing work which is done strictly and only by oil field workers, handling the tubing to be used in completing the well and he was certainly not a "seaman in being". 222 F.2d 382, at 387 (emphasis original).

This Court reversed the Court of Appeals and, in a *per curiam* opinion, remanded the case to the District Court with directions to reinstate its judgment. *Gianfala* thus concluded that oil field workers, of the sort involved in the matter now before the Court, can be seamen under the Jones Act, that submersible drilling barges such as the Sohyde barge can be, as the trial court found, vessels *and that such findings should not be disturbed by a Court of Appeals.*

The seaman status of the Sohyde crew was not an issue before the District Court, and hence was not addressed in its findings. However, the status of the Sohyde barge was and the Court concluded that it was a vessel. The nature of the circumstances surrounding the blowout was also a factual issue, and the District Court made very extensive fact findings relating to the maritime nature of the wellsite, its distance from solid ground, its accessibility solely by marine transportation or seaplane, and the activities aboard the vessel, before concluding that there was admiralty jurisdiction. It is apparent that the District Court did consider the question of whether there was a sufficient relationship with traditional maritime activities for admiralty jurisdiction to apply, as evidenced by footnote 3 to the conclusion that it had admiralty jurisdiction (Appendix

page 12) where it cited the Admiralty Extension Act *and* stated that "As to Maritime nexus, *See Executive Jet Aviation, Inc. v. City of Cleveland, Ohio* ..." Hence, contrary to the Court of Appeals' expression that "We agree with the District Court that if admiralty jurisdiction is to be found, this Act must be its source" (Appendix, page 12), the District Court obviously based jurisdiction upon both the Admiralty Extension Act and satisfaction of the *Executive Jet* test.

The Court of Appeals apparently recognized the pitfall of *Gianfala* and carefully refrained from specifically overruling the District Court's conclusion on the vessel status of the Sohyde barge. Indeed, the Court of Appeals said: "There seems little doubt that if the present action were one for personal injuries under the Jones Act or maritime law sustained by one having the status of a *Robison* seaman that the drilling barge, even in its submerged position, would be considered a 'vessel' for purposes of the Act." (Appendix page 27.)

In order to apply a different standard for purposes of Coastal's claim, however, the Court of Appeals went on to say that '...we are not convinced that the term 'vessel' for Jones Act purposes, which is subject to liberal construction consistent with the purposes of the Act, is necessarily a vessel for other purposes as well. At any rate, we believe that even though a structure may meet some abstract definition of 'vessel' under some circumstances, this is not necessarily dispositive of the issue of whether the structure had a substantial relationship to maritime activity at the time of the incident in question." (Appendix page 27.)[16/]

The Court of Appeals concluded that "Although the Sohyde 28 may have had some maritime character at

16/ In fn. 5 of its opinion the Court of Appeals went even further with the remark that what might constitute a vessel for purposes of one statute may well constitute a different type structure for another. (Appendix page 28.)

the time of the well blowout — in the sense that it floated in and presumably would float out — it clearly was not substantial." (Appendix page 28.)

The Court of Appeals, has thus unduly restricted *Gianfala* to Jones Act cases. It has attempted to carve out Jones Act cases as an exception to its ruling, thereby effectively reversing the trial court's finding of vessel status. The illogic of this can easily be seen; if, under the facts of *Gianfala*, there had been a well blowout one minute after Oscar Martin's death, would admiralty principles have applied to his claim but state law to suits for property damage resulting from the blowout?

Such bifurcated teatment of vessels should not suffice to deprive the federal courts of admiralty jurisdiction in a clearly maritime context. Vessels are not abstract creatures, they are defined ones. This Court has held special purpose barges to be vessels, even though they may be without motive power, since they are a means of transportation on water. *Norton v. Warner Co.*, 321 U.S. 565, 571, 64 S.Ct. 747 (1944). Congress has also defined vessels very broadly in 1 U.S.C. 3:

> The word 'vessel' includes every description of water craft or other artifical contrivance used, or capable of being used, as a means of transportation on water.

Shortly after this Court handed down *Gianfala* the Fifth Circuit decided *Offshore v. Robison*, 266 F.2d 769 (5th Cir. 1959). Affirming a finding of seaman and vessel status of an oil field roustabout on a mobile drilling barge, it had this to say:

> *Gianfala v. Texas Company*, 1955, 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 775, reversing *Texas Company v. Gianfala*, 5 Cir. 1955, 222 F.2d 382, is the key

> case in the conversion of offshore oil field workers into seamen.
>
> * * * *
>
> Like the submersible barge in *Gianfala*, Offshore No. 55 was a special purpose vessel, a floating drilling platform. Robison's duties aboard that vessel contributed to her mission, to the operating function she was designed to perform as a seagoing drilling platform. 266 F.2d at 774 and 779.

Since *Robison*, offshore oil field workers have uniformly been treated as seamen, their drilling barges as vessels, and admiralty jurisdiction has been applied in Jones Act and maritime tort situations alike. See, e.g., *Transcontinental Gas Pipe Line Corp. v. Mobil Drilling Barge and Signal Oil and Gas Company v. Ocean Drilling and Exploration Co.*, 424 F.2d 684 (5th Cir. 1970), *cert. denied* 400 U.S. 832, where admiralty jurisdiction was applied to a claim for property damages caused when a submersible drilling barge came in contact with a pipe line while being submerged.

In a virtually identical oil well blowout case decided here in Louisiana, out of which a fire and extensive damage occurred, District Judge Duplantier phrased the jurisdictional answer this way, in *Terra Resources, Inc. v. Atchafalaya Workover Contractors*, 1980 A.M.C. 1082, 1087 (E.D.La. 1978):

> Any issues arising in tort come within the Court's admiralty jurisdiction. In *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 1973 AMC 1 (1972), the Supreme Court held that to invoke admiralty jurisdiction the tort plaintiff must show that the tort occurred on navigable water and that the occurrence bears a significant relationship to traditional maritime activity. Plaintiff, Terra, su-

> ing in its capacity both as owner of the lease and as assignee of certain third-party claims, sufficiently made this showing. Clearly, any tort occurred on navigable water. The parties stipulated that Atchafalaya's rig no. 4, a vessel, was located on navigable waters at the time of the accident.
>
> In addition, this well blowout bears a significant relationship to traditional maritime activity. *In light of the nearly thirty years of mineral development by daily usage of thousands of similar vessels in admiralty waters, one can hardly argue that this offshore search for oil and gas by means of a vessel does not constitute 'traditional maritime activity'.* 1980 AMC at 1087 (emphasis added).

It is apparent from the facts in *Gianfala* that submersible drilling rigs have been used in navigable waters in the exploration of oil and gas beneath the sea beds for over a quarter of a century. After so many years of mineral development beneath the waters of the sea, and the use of vessels not only in such exploration but in the interstate transportation of minerals thus developed, how can it be said that the activities of those vessels and their crews, which have been found time and time again to be seamen engaged in their vessels' missions, do not bear a substantial relationship to traditional maritime activity?

III.

THE COURT OF APPEALS' DECISION CREATES AN IRRECONCILABLE SPLIT IN THE CIRCUITS ON THE QUESTION OF JURISDICTION UNDER THE ADMIRALTY EXTENSION ACT

The Fifth Circuit's finding that "Claims under the Admiralty Extension Act [are] subject to the "maritime relationship' rule of *Executive Jet*" (Appendix page 26) creates a split in the Circuits on the basis of jurisdiction under that Act. See *St. Hilaire Moye v. Henderson, supra,* and *Gebhard v. SS Hawaiian Legislator, supra,* and discussion of those cases at pages 11-13 of this Petition.

Apparently, no other Circuits have addressed this question. Thus, only this Court can resolve the clear split among the Circuits; admiralty jurisdiction, particularly as it exists under specific statutory authorization, must be applied uniformly.

CONCLUSION

Petitioner urges this Court to issue a Writ of Certiorari to the Court of Appeals for the Fifth Circuit, to reverse that Court's decision below and to remand the matter to the District Court with instructions that its Judgment be reinstated.

Dated July 31, 1981

Respectfully submitted,

Benjamin R. Slater, Jr.
William J. Hamlin
MONROE & LEMANN
1424 Whitney Building
New Orleans, Louisiana
Telephone: (504) 586-1900

ATTORNEYS FOR
PETITIONER,
COASTAL STATES
GAS PRODUCING CO.

APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SOHYDE DRILLING & MARINE COMPANY, et al

VERSUS

COASTAL STATES GAS PRODUCING COMPANY, et al

CIVIL ACTION

NO. 72-1856

SECTION "F"

CONSOLIDATED WITH

JEANETTE RANSON DECUIRE, et al

VERSUS

SOHYDE DRILLING & WORKOVER, INC., et al

CIVIL ACTION

NO. 73-3228

SECTION "F"

These consolidated actions involve extensive property damage claims and a death claim arising out of a well blowout which occurred on July 31, 1971. Various cross, counter and third party claims were filed.

Immediately prior to trial, Civil Action 73-3228 was amicably settled between all parties and on motion of counsel, the Court dismissed said claims, including all cross-claims, counter-claims and third party claims.

Thus, the only claim tried to the Court was the liability vel non of Coastal's cross-claim for property damage against Sohyde Drilling and Marine Company, Sohyde Drilling and Exploration Company and Sohyde Drilling and Workover, Inc. and their liability insurers, Market Insurance Company and Employers' Surplus Lines Insurance Company.

After considering the evidence and the law, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1.

Coastal States Gas Producing Company [1/] is a Delaware corporation with its principal place of business within the Eastern District of Louisiana. At all times pertinent hereto, it was the owner and operator of the Edna Delcambre No. 4 Well.

2.

Sohyde Drilling and Workover, Inc.[2/] is a Loui-

1/ Hereinafter referred to as Coastal.
2/ Hereinafter referred to as Sohyde.

siana corporation, which at all times pertinent hereto, operated the *Sohyde 28*[3/] and the equipment thereon.[4/]

3.

The Edna Delcambre No. 4 Well, originally completed by Coastal in 1969, is a dually completed high pressure gas condensate well with production achieved from two separate producing zones, i.e. the Planulina 6 Sand, the upper zone, and the Planulina 8 Sand, which is the lower zone and the higher pressure of the two[5/]. It is located approximately six miles south of Delcambre, Louisiana in approximately eight feet of water within a dredged navigable canal slip approximately 120 feet wide. The canal slip is connected to the Intracoastal Waterway and Vermillion Bay by navigable canals. The well is accessible solely by marine transportation such as barges and crewboats or by seaplane and the nearest solid ground is the Union Tigre Lagoon Landing approximately two miles away[6/].

4.

After Coastal performed a periodical leakage test in June of 1971,[7/] it determined that damaged tubing was causing gas to leak from the lower to the upper zone. Coastal's workover plan to cure the downhole communication problem called for replacement of the damaged portion of the long string tubing. The initial

---

3/ A submersible drilling barge owned by Sohyde Drilling and Marine Co.

4/ Owned by Sohyde Drilling and Exploration Company now known as Spade Drilling and Exploration Company.

5/ Exhibits P-17, 18 & 20; Deposition Testimony of Al Cogbill, Division Production Manager for Coastal, Exhibit P-5, pp 7-9, 101.

6/ See Exhibits P-7, P-8, P-9; Testimony of Douglas Brown, Vice President of Coastal, TR pp. 62-69.

7/ Exhibit P-10.

step was to kill the well and the next step was to circulate drilling mud down the well hole to ensure that all gas pockets were removed. This procedure had to be successfully completed before any tubing could be safely removed from the hole and the repairs effected.[8/]

5.

On July 7, 1971, Coastal contracted with Sohyde to furnish a rig and crew to perform workover operations.[9/] As part of the workover procedures, Coastal contracted with Oil Base, Inc. to furnish drilling mud and technical services.

6.

On July 7, 1971, Sohyde moved its rig and crew on location. Two separate workover crews were furnished, each working a twelve hour shift. One crew, consisting of four men, was under the direction of driller Scotty Smith and the other, consisting of three men, was under the direction of driller Jim Smith. Additionally, Sohyde's tool pusher, E. J. Decuire was aboard the vessel.

The only other persons on location at that time were Fred Breaux, Coastal's drilling and completion foreman, and Carl Guilbeau, a mud engineer employed by Oil Base, Inc.

7.

Fred Breaux was ultimately responsible for the entire operation and his function was to generally supervise and coordinate the workover operations between the various independent contractors on the job. He determined the procedures

8/ Testimony of Al Cogbill, Exhibits P-5, pp 10, 33.
9/ Exhibit P-12.

to be used and gave his orders directly to Sohyde's toolpusher or, if the latter was unavailable, to the driller. He made daily telephone reports to Coastal's land based Division Production Manager, Al Cogbill.

E. J. Decuire, Sohyde's toolpusher and chief employee on the job, was responsible for supervising and directing the drillers and their crews and to generally oversee the entire Sohyde operation. It is the driller who determines how the specifics of a job are to be accomplished and to make certain that his crew performs properly.

Carl Guilbeau, the mud engineer, was in charge of supervising the mud weight and insuring that the properties of the mud were maintained as directed by Coastal.

8.

On July 8, 1971, production on the well was stopped and both strings of tubing were killed by pumping drilling mud down the hole to counterbalance or offset the bottom hole gas pressure of the well. 10/

9.

On July 9, 1971, Sohyde installed its blowout preventers on the well head. Primary control of a gas well is maintained by keeping sufficient density and height in the mud column to counterbalance the hydrostatic pressure exerted by productive gas formations. Blowout preventers are basically a secondary safety device to guard against blowouts. If control of the well is not

---

10/ Exhibits P-13 and P-14.

maintained by the mud column, then the blowout preventers are put into action.

10.

Sohyde's preventer, a Cameron F type, consisted of three levels: (1) pipe rams, located at the bottom level, are designed to give the workover crew control of the well by closing off the well head when drill pipe is extended up through the blowout preventers. Single offset rams or dual rams are used, depending on whether one or two strings of tubing are to be extended; (2) blind rams, located in the center above the pipe rams, are designed to give a total shut-off of the well when no drill pipe is extended through the preventer; and (3) the hydril, located at the top level above the blind rams, is designed to close off the well when no drill pipe is extending up through it.[11/]

11.

During the next few days, various operations were performed on the well. Drilling mud was circulated down the well hole and some of the tubing was removed therefrom, during which time the well "kicked" at intervals.

On July 12, 1971, it became apparent that the well was losing mud into the formation due to excessive hydrostatic pressure in the anulus. In an effort to seal off that zone that was taking mud, Coastal retained Halliburton Company to run a lost circulation plug into the hole. In order to properly place the lost circulation plug, Breaux decided to bring the second string of drill pipe up to the rig floor, through and above the blowout preventers, installing a valve in

---

11/ See Exhibits P-19 and P-21; Testimony of Douglas Brown TR pp. 88-89.

the top. Since two strings of tubing would be hanging through the preventers, the single offset pipe rams had to be replaced with dual pipe rams. That night, the dual rams, furnished by Land & Marine Rental Company, were installed in the preventers by driller Scotty Smith and his crew.

12.

At midnight, driller Jim Smith and his crew came on duty. At about the same time the Halliburton barge arrived at the scene. The three Halliburton employees, Murrell Stokes, Marc Mouton and a Mr. Duplechain began preparing their equipment to run the plug.

13.

In view of the fact that the dual rams were not seating properly and were inoperative, Fred Breaux, in the early morning hours of July 13, 1971, instructed Jim Smith to change the dual rams back to single offset rams and to keep the hole filled with mud at fifteen minute intervals during the ram change.

14.

Before beginning the ram change, Jim Smith filled the hole with mud. After one side of the rams changed and while the crew was in the process of changing the other side, the well began spewing drilling mud out of the open ram gates on the blowout preventer. The well, which now was out of control, ultimately caught on fire, causing extensive damage.

15.

From the credible weight of the evidence adduced at trial, the Court finds that excessive loss of hydro-

static pressure due to Sohyde's failure to maintain proper mud levels during the ram change was a proximate cause of the well blowout.

16.

The driller of a workover rig and his crew are responsible for maintaining proper mud levels. At the time Breaux instructed Jim Smith to change the dual rams back to offset, the well hole was losing mud at approximately 9 barrels per hour. Although Breaux specifically instructed Sohyde's driller to maintain proper mud levels at fifteen minute intervals throughout the ram change operations, Jim Smith testified that during the entire ram change operation, which took approximately one and one half hours, additional drilling mud was neither added to the hole nor was the mud level even checked.[12/]

The evidence further reflects that Smith never informed Breaux that he couldn't add mud every fifteen minutes but that Smith simply ignored his instructions.

17.

All the experts agreed that had Sohyde followed Breaux instructions and maintained a proper mud level, the well would not have blown out.[13/] Although mud could not have been added through the top fillup line while the ram gates were open, the Court finds that mud could have been added halfway through the operation after the first side of the dual rams had been changed. Additionally, it would have been a reasonably

---

12/ Testimony of Jim Smith, Exhibit P-6, pp 16, 24, 83-84, Exhibit P-6a pp. 23, 82-85.

13/ Testimony of Douglas Brown, Webb Jay and Jerry McKnight, TR pp. 102, 129-130, 203-204, 210, 213, 222, 243, 245, 253, 337, 379 and 387.

safe procedure to add mud throughout the operation by attaching fillup lines below the preventers.[14/]

18.

In view of the foregoing, we find that Sohyde was negligent in failing to carry out Breaux's instructions to exercise reasonable care in maintaining proper mud levels during the ram change operations or in checking with Breaux as to other methods of keeping the hole filled if he was unable to follow Breaux's instructions.[15/]

19.

To change from dual to offset rams is a two step process involving the opening of two gates. One gate is opened by removing 6 bolts, one-half of the dual rams is removed and one half of the single ram is installed; then the gate is closed and rebolted. This identical process is repeated on the other gate.

Under normal conditions a workover crew should be able to change from dual to offset rams in anywhere from fifteen to forty-five minutes.[16/] However, speed was of the essence and, in view of the fact that while the rams were being changed, the only thing controlling the well was the mud column, it should have been done sooner.[17/]

Sohyde began the ram change operations at approximately 1:00 to 1:15 A.M. on July 13, 1975. The well began spewing between 2:15 and 2:30 A.M. At that

---

14/ Testimony of Douglas Brown, Expert petroleum engineer, TR pp. 109-110, 185-187, 190; Testimony of Webb Jay (accepted as an expert engineer TR p. 220) TR pp. 224-225, 292; Deposition testimony of Al Cogbill, Exhibit P-5, p. 23.

15/ See testimony of Jerry McKnight, TR p. 388.

16/ Testimony of Douglas Brown and Webb Jay TR pp. 91, 224; Deposition of Fred Breaux, Exhibit P-4, pp. 4, 41, 155; Deposition of Al Cogbill, Exhibit P-5, p. 20; Deposition of Jim Smith, Exhibits P-6, p. 26 and P-6a, pp. 27, 50.

17/ Testimony of Jerry McKnight, TR pp. 376-378.

time, the ram change operation was still ten to fifteen minutes from completion.[18/]

Jim Smith testified that he knew this well was a high pressure well and, in his opinion, a dangerous one, yet the evidence reflects that after changing one side of the dual rams, the Sohyde driller and two or three of his crew went to the galley for a coffee break until ordered back to work by Breaux.[19/]

20.

In view of the foregoing, we find that a concurring cause of the accident was the negligence of the Sohyde crew, under the direction of driller Jim Smith, in failing to exercise reasonable care in completing the ram change operations within a reasonable period of time under the emergency conditions prevailing at the time.[20/]

21.

The workover crew is responsible for the maintenance and workmanship of its rig and equipment.[21/] After Breaux made complaints, concerning the condition of Sohyde's rig, equipment and crew to both Coastal and Sohyde representatives, Sohyde represented to Breaux that all necessary repairs to its equipment and rig had been completed prior to July 13, 1971.[22/]

22.

After the well began flowing, Breaux noticed that

18/ Testimony of Jim Smith, Exhibit P-6a, pp. 46, 49.

19/ See testimony of Murrell Stokes, Marc Mouton and Fred Breaux, Exhibit P-15, pp 2-3, 10; Exhibit P-16, pp 2, 21-24; Exhibit P-4, pp 24-25.

20/ Testimony of Douglas Brown and Webb Jay, TR pp, 100, 245-246.

21/ Testimony of Webb Jay, TR p. 268; Testimony of Jim Smith Exhibit P-6a, pp. 107-111.

22/ Exhibit P-4, pp. 18-20, 40, 110, Deposition testimony of Al Cogbill P-5, pp. 13.

someone had closed the hydril. He attempted to relieve the pressure by opening one of Sohyde's choke manifold valves to divert the pressure from the top of the blout preventers back into the mud pits, only to find the line plugged up and inoperative.[23/] Then Breaux and E. J. Decuire, Sohyde's toolpusher, attempted to control the well and prevent a blowout by pumping mud into the hole. However, due to insufficient air pressure, the Sohyde mud pump would not start.[24/]

23.

Both Jay and Brown testified that after the well began spewing, there would have been a possibility of controlling the well if the pump had been operable.[25/]

24.

The Court finds that Sohyde was negligent in failing to furnish and/or maintain its equipment in a reasonably fit condition to perform the necessary functions required of it in connection with the workover operations and the blowout of July 13, 1971.

25.

Sohyde contends that Breaux's actions in reducing the mud weight and in placement of the tiers or levels of the blowout preventer caused the well blowout. From the credible weight of the evidence adduced at trial, the Court finds that the drilling mud weight used by Coastal throughout the operation was adequate and placement of the levels and type of rams used in the preventer were reasonable under oil field practices.[26/]

23/ P-4, pp. 29-31.
24/ P-4, pp. 32, 274.
25/ TR pp. 111, 268.
26/ Testimony of Douglas Brown & Webb Jay, TR pp. 99, 119, 177, 191, 196-197, 255-256, 259, 286-288, 291, 322; Testimony of Al Cogbill, Exhibit P-5, p. 18, 24.

26.

Although Sohyde contends that Breaux was negligent in ordering the ram change under conditions existing at the time, the Court finds that Breaux's decision to change the rams was reasonable. Since blowout preventers are merely a safety device to guard against blowouts and since the dual rams were malfunctioning, the blowout preventers were totally ineffective. Thus, to counteract this dangerous condition, it was imperative that the rams be changed.[27/] However, the court finds that Breaux was negligent in choosing to change the rams by a method which completely opened up the hole, leaving the well totally unprotected, when he could have installed back-pressure valves in the two strings of tubing and/or placed a mud flowline below the preventers.

Although hindsight is better than foresight, and although the testimony indicates that the aforementioned methods could have caused serious problems,[28/] Breaux should have implemented an additional safety device or, during this critical period, kept a closer watch on the actions of Jim Smith and his crew, especially in view of the fact that he saw the crew taking a coffee break during the ram change.

27

At all times pertinent hereto, Market Insurance Company Policy No. XGA 003920[29/] and Employers' Surplus Lines Insurance Company policies No. S-16-06187 and No. S-16-06729[30/] covered and insured the liability of Sohyde in connection with operations under

---

27/ Testimony of Webb Jay, TR p. 244.

28/ Testimony of Al Cogbill, Exhibit P-5, p. 155. Testimony of Webb Jay and Jerry McKnight TR pp. 324-325, 383.

29/ Exhibit P-1

30/ Exhibits P-2, [illegible]2 and P-24.

the July 7, 1971, contract between Coastal States Gas Producing Company and Sohyde Workovers, and the liability of Sohyde Workovers for its negligence in the performance of the July 7, 1971, contract.

CONCLUSIONS OF LAW

1.

Coastal's claim against Sohyde is based on maritime tort. The Court concludes that the *Sohyde 28* is a vessel,[1/] that the accident occurred on the navigable waters of the State of Louisiana[2/] and that we have admiralty jurisdiction.[3/]

2.

The Court concludes that Sohyde, through its employees, was negligent in the manner in which it conducted its workover operations and that its negligence was a proximate cause of the blowout of Coastal's well.[4/]

3.

The Court concludes that Sohyde was negligent in failing to maintain equipment reasonably fit for its purposes and that Sohyde's negligence was a proximate

---

1/ *Hicks v. ODECO*, 512 F2d 817 (CA5-1975); *Producers Drilling Co. v. Gray*, 361 F2d 432 (CA5-1966).

2/ *Dow Chemical Co. v. Dixie Carriers, Inc.*, 463 F2d 120 (CA5-1972).

3/ 42 USC 740; *Continental Oil Co. v. London Steam-Ship Own. Mut. Ins., Assn.*, 417 F2d 1030 (CA5-1969). As to Maritime nexus, See *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 US 249, 93 S.Ct. 493 (1972); *Kelly v. Smith*. 485 F2d 520 (CA5-1973) *cert. den.* 416 US 969, 94 S.Ct. 1991 (1973); and *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 US 352, 89 S.Ct. 1835 (1969) at p. 1842, n. 12.

4/ *Armstrong v. Chambers & Kennedy*, 340 FS 1220 (SD Tex. 1972) aff. in part and rvs'd on other grounds *In Re Dearborn Marine Serv. Inc.*, 499 F2d 263 (CA5-1974); rehr. den. 512 F2d 1061 (CA5-1975); *Case v. Monsanto Chemical Co.*, (S.D. Miss. 1967) aff. 420 F2d 1103 (CA5-1970); *Aladdin Oil Co. v. Rayburn Well Service, Inc.*, 202 So2d 477 (La. App. 4-1967) writ den. 204 So2d 573.

cause of the inability to bring the well under control after it began flowing.

4.

The Court concludes that Coastal's negligence in failing to attach fill up lines below the preventers proximately contributed twenty five percent to the accident.

5.

The Court concludes that the insurance policies of Market Insurance Company and Employers Surplus Lines Insurance Company, bearing Nos. XGA003920, S-16-06187 and S-16-06729 respectively, cover and insure Sohyde for its liability in connection with its performance of workover operations under the July 7, 1971, contract.[5/]

Let judgment be entered accordingly.

New Orleans, Louisiana, this 31st day of March, 1976.

Lansing L. Mitchell
UNITED STATES DISTRICT JUDGE

5/ *Meadows & Walker Drilling Co. v. Pacific Emp. Indem. Co.*, 324 FS 282 (SD Tex. 1971); *Aladdin Oil Co. V. Rayburn Well Service, Inc., supra.*

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SOHYDE DRILLING AND MARINE CO., ET AL
v.
COASTAL STATES GAS PRODUCING COMPANY

CIVIL ACTION
NO.: 72-1856
SECTION "F" (2)

JUDGMENT

Considering the Special Master's June 20, 1978 Findings and Recommendation for Judgment,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of Coastal States Gas Producing Company against Sohyde Drilling and Workover, Inc., Market Insurance Company and Employers Surplus Lines Insurance Company, jointly, severally and *in solido,* to the extent of their respective liability as set forth hereinbelow, in the principal sum of ONE MILLION SEVEN HUNDRED SIXTY ONE THOUSAND EIGHT HUNDRED NINETY EIGHT AND 74/100 ($1,761,898.74) DOLLARS, together with judicial interest thereon from November 3, 1972, until paid, and costs of these proceedings.

The judgment against Market is limited to $100,000.00, plus judicial interest on said $100,000.00 from November 3, 1972 to the entry of judgment herein,

plus judicial interest on the entire principal sum of $1,761,898.74 from the entry of judgment herein until it pays, tenders or deposits in Court the said $100,000.00 and judicial interest accrued thereon, and for all costs.

The judgment against Employers is limited to $1,661,898.74, together with judicial interest on said $1,661,898.74 from November 3, 1972 until paid, except that Employers shall be entitled to credit for any judicial interest paid on said $1,661,898.74 by Market as set forth above, and for costs.

The Clerk is directed to enter judgment as set forth above forthwith.

New Orleans, Louisiana this 10th day of July, 1978.

Lansing L. Mitchell
UNITED STATES DISTRICT JUDGE

APPENDIX C

SOHYDE DRILLING & MARINE CO. and Sohyde Drilling & Exploration Co., whose name has been changed to Spade Drilling & Exploration Co., Plaintiffs,

v.

COASTAL STATES GAS PRODUCING CO., Defendant-3rd Party Plaintiff-Appellee,

v.

SOHYDE DRILLING & MARINE CO. and Sohyde Drilling & Exploration Co. (Sohyde Drilling & Workovers, Inc.), name changed to Spade Drilling & Exploration Co. and Market Insurance Co., 3rd Party Defendants-Appellants,

The Travelers Insurance Co., 3rd Party Defendant.
No. 78-2817.

United States Court of Appeals, Fifth Circuit.
May 14, 1981

Plaintiff brought suit for property damages arising out of blow out of its high pressure gas well which occurred while defendant was performing work over operation on well aboard its submersible drilling barge which, at the time, was resting on bottom of dead-end dredged canal slip in Louisiana. The United States District Court for the Eastern District of Louisiana, at New Orleans,

Lansing L. Mitchell, J., entered judgment against defendant, and defendant appealed. The Court of Appeals, Brown, Circuit Judge, held that: (1) for admiralty jurisdiction to lie over tort actions brought under Admiralty Extension Act, injury complained of must bear significant relationship to maritime activity; (2) admiralty jurisdiction was improperly assumed because of lack of substantial maritime relationship; and (3) remand was appropriate.

Vacated and remanded.

1. Admiralty 18

For admiralty jurisdiction to lie over general maritime tort action, not only must locality test be met but also injury complained of must bear significant relationship to maritime activity.

2. Admiralty 18

For admiralty jurisdiction to lie over tort actions brought under Admiralty Extension Act, injury complained of must bear significant relationship to maritime activity. Admiralty Jurisdiction Act, 46 U.S.C.A. § 740.

3. Admiralty 18

In determining existence of substantial maritime relationship for purpose of jurisdiction under Admiralty Extension Act, factors which may be considered include; functions and roles of parties; types of vehicles and instrumentalities involved; causation and type of injury; and traditional concepts of role of admiralty law. Admiralty Jurisdiction Act, 46 U.S.C.A. § 740.

4. Admiralty 18

District court improperly assumed admiralty jurisdiction in action for property damages arising out of blow out of plaintiff's high pressure gas well which occurred while contractor was performing work over operations on well aboard its submersible drilling barge which, at the time, was resting on bottom of deadend dredged canal slip in Louisiana, since occurrence lacked significant relationship to maritime activity. Admiralty Jurisdiction Act, 46 U.S.C.A. § 740.

5. Federal Courts 841

Findings which are made under erroneous legal principles cannot be credited.

6. Federal Courts 937

Because district court's conclusion that cause of well blow out was 25 percent due to negligence of plaintiff operator was made in light of its erroneous conclusion that maritime rule of comparative negligence controlled case, Court of Appeals was unable to say that district court would have reached same conclusion if it had considered case in light of contributory negligence rule of Louisiana, and therefore, remand was appropriate.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before BROWN, AINSWORTH and FRANK M. JOHNSON, Jr., Circuit Judges.

JOHN R. BROWN, Circuit Judge:

Appellants, Sohyde Drilling and Marine Co. (Sohyde) and others, appeal from an adverse judgment by the District Court which found them liable to Appellee, Coastal States Gas Producing Co. (Coastal), for property damages arising out of the blowout of Coastal's high pressure gas well. The blowout occurred while Sohyde was performing workover operations on the well aboard its submersible drilling barge which, at the time, was resting on the bottom of a dead-end dredged canal slip in Louisiana. Because we find that the District Court improperly assumed admiralty jurisdiction in this case, we vacate and remand.

Blowout In The Marsh

The essential facts of this case are not in dispute. In 1971, Coastal was the operator of a high pressure gas well which was dually completed so that production was being obtained from two separate producing zones. The well was located within the State of Louisiana, approximately six miles south of the town of Delcambre, in a dead-end dredged canal slip approximately eight feet deep and 120 feet wide. The slip was connected to the Intracoastal Waterway and Vermillion Bay by navigable canals and was accessible only by water transportation such as barges, crew boats or sea planes—the nearest solid ground being approximately two miles away.

In June 1971, Coastal determined that damaged tubing in the well was causing gas to leak from the lower producing zone to the upper zone. On July 7, 1971, Coastal contracted with Sohyde to perform workover

operations on the well.[1] Thereafter, Sohyde towed a submersible drilling barge, the Sohyde 28, onto location, submersed it to the bottom of the canal, and commenced operations. On July 13, during the course of operations, the well blew out and ultimately caught on fire, causing extensive damage.

Following the well blowout, various claims, counter-claims and cross-claims ensued. Ultimately all of these actions, including Jones Act claims, were settled, save claims by Coastal against Sohyde and its liability insurers—Market Insurance Co. and Employers Surplus Lines Insurance Co. Coastal's claims were solely for property damages arising out of the well blowout, including damages for control of the blowout, repair of damaged well facilities, compensation for lost gas and the like.

After a bench trial, the District Court concluded first that it had jurisdiction in admiralty. The Court then found that the well blowout was proximately due 75% to the negligence of Sohyde and 25% to the negligence of Coastal. In accordance with these findings, the Court entered judgment in favor of Coastal for $1,761,898.74. The Court further concluded that Sohyde's liability to Coastal was covered under the insurance policies it had with the two insurance companies.

This appeal was brought by Market Insurance Co. on its own behalf and on behalf of Sohyde — for purposes of simplification the collective appeal is referred to as one by Sohyde—limited solely to that portion

---

1/ Various Sohyde entities were involved in thic case. Sohyde Drilling and Workover Company entered into the contract with Coastal; Sohyde Drilling and Marine Company owned the barge; and Sohyde Drilling and Exploration Company owned certain equipment located on the barge. Because it is unnecessary to distinguish between these various entities, for purposes of this appeal we refer to them collectively as "Sohyde".

of the jugment apportioned to Market.[2] Two points are urged on this appeal. First, it is contended that admiralty jurisdiction does not lie over this claim. Second, it is argued that Market's insurance policy does not cover the liability of Sohyde to Coastal.

A Maritime Blowout?

The jurisdictional question is of crucial importance in this case. Sohyde maintains that admiralty jurisdiction was improperly assumed by the District Court and that under diversity jurisdiction Louisiana's contributory negligence rule bars recovery.[3] Coastal contends that the District Court properly assumed jurisdiction in admiralty and, therefore, properly applied the maritime rule of comparative negligence.

Although the express stated findings of the District Court with respect to the jurisdictional question are not extensive, it is evident that the Court felt admiralty jurisdiction to be appropriate under the Admiralty Extension Act, 46 U.S.C. § 740. We agree with the District Court that if admiralty jurisdiction is to be found in this case, this Act must be its source.

The Act, in pertinent part, provides:

> The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

---

2. Market's policy with Sohyde contained a $100,000.00 policy limit.

3. Sohyde asserts in the alternative that even if admiralty jurisdiction lies in this case, Louisiana substantive law should apply. In light of our ultimate holding, we need not pass on this question.

Under the express terms of the Act, our jurisdictional inquiry on appeal would seem to be limited to whether the Sohyde 28 was a "vessel" and whether it was on "navigable water" at the time it caused the property damage in question. However, we believe that there is a more fundamental inquiry which confronts us—that is, whether the wrong asserted in the instant action bears a significant relationship to maritime activity. In short we believe, the seemingly unequivocal language of the Act notwithstanding, that "vessel" plus "navigable water" does not necessarily equal admiralty jurisdiction under the Act.

[1] Our conclusion on this score stems from our conviction that jurisdiction under the Admiralty Extension Act, enacted in 1948, is necessarily constrained by the principles set forth in the subsequent Supreme Court case of *Executive Jet Aviation, Inc. v. Cleveland,* 409 U.S. 249, 93 S. Ct. 493, 34 L.Ed.2d 454 (1972), and the case law left in its somewhat irregular contrails. In this regard, it is now well established in this Circuit, on the strength of *Executive Jet,* that for admiralty jurisdiction to lie over a general maritime tort action not only must the locality test be met but also the injury complained of must bear a significant relationship to maritime activity. *Moser v. Texas Trailer Corp.,* 623 F.2d 1006, 1009 (5th Cir. 1980); *Sperry Rand Corp. v. Radio Corp. of America,* 618 F.2d 319, 321 (5th Cir. 1980). This, of course, does not answer the related question of whether the *Executive Jet* rule, clearly applicable to general maritime tort actions, is also applicable to tort actions brought under the Admiralty Extension Act. Because we find no case in this Circuit which has squarely resolved this question, we believe that before proceeding further this point merits discussion.

The Extent of Extension

We find support for our conclusion that the *Executive Jet* rule constrains the Admiralty Extension Act in the legislative history of the Act itself. The legislative history makes clear that the purpose of the Act was to correct the inequities, and anomalies, arising under then existing law which extended admiralty jurisdiction only to those cases in which injury was actually done or consumated upon navigable waters. For example, as the legislative history observes, prior to 1948 when a vessel collided with a bridge through mutual fault and both were damaged, the owner of the bridge was denied an action in admiralty and thus was barred from recovery because of the contributory negligence barrier, whereas the vessel owner was entitled to recovery against the bridge owner in admiralty, contributory negligence operating only to reduce the recovery under the then available theory of mutual fault—more recently replaced by application of the rule of real comparative fault. *United States v. Reliable Transfer Co.*, 421 U.S. 397, 95 S.Ct. 1708, 44 L.Ed.2d 251 (1975). The Act was designed to correct situations such as this, arising from the strict locality test, allowing actions by both vessel owner and bridge owner to be resolved in admiralty. U.S. Code Cong. Service, pp. 1898, 1899 (1948). Even more significant, the Act afforded an effective remedy to the innocent owner of land-based property damaged as a result of glaring fault upon the part of a compulsory pilot aboard the vessel for whose fault the vessel owner would ordinarily not be held liable. *See Homer Ramsdale Transp. Co. v. LaCompagnie Generale Transatlantique,* 182 U.S. 406, 21 S. Ct. 831, 45 L.Ed. 1155 (1901).

The legislative history further observes:

> Adoption of the bill will not create new

> causes of action. It merely specifically directs the courts to exercise the admiralty and maritime jurisdiction of the United States already conferred by article III, section 2 of the Constitution and already authorized by the Judiciary acts.

Id., at 1900. This observation was echoed by this Court in *Louisville & N.R. Co. v. M/V Bayou Lacombe*, 597 F.2d 469 (5th Cir. 1979). In that case, a railroad company brought a claim in admiralty for damages for the loss of the use of a bridge—which the railroad did not own and in which it had no Alabama property interest—negligently struck by a vessel. Although recovery for damages of this kind was seemingly barred under the established rule of maritime law enunciated in *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303, 48 S. Ct. 134, 72 L.Ed. 290 (1927), the railroad company argued that the rule in question was irrelevant under the Admiralty Extension Act which, according to the railroad, permitted recovery for *all* injuries to property. This Court, in an opinion by Judge Wisdom, rejected this argument finding, "the Act... does not create new causes of action; it merely expands the locality rule of admiralty jurisdiction to encompass 'ship-to-shore' torts." *Id.*, at 472, and on the basis of *Robins*, and our cases following it, held there was no claim for tortious interference with contractual relations. To do so would, in the Court's view, be the creation of a new cause of action.

[2] In sum, we find that the Admiralty Extension Act was intended to eliminate the inequities, and anomalies, resulting from the strict application of the locality rule in admiralty under then existing law. The Act was not intended to grant claimants new substantive rights of recovery nor relieve them from jurisdic-

tional constraints unrelated to locality—a *la Executive Jet*—imposed on general maritime tort claimants. Accordingly, we find claims under the Admiralty Extension Act to be subject to the "maritime relationship" rule of *Executive Jet*.[4]

Substantially Salty?: Of Jets And Vessels

[3] Having concluded that actions under the Admiralty Extension Act are subject to the *Executive Jet* "maritime relationship" rule, we now consider that rule in light of the facts of the instant case. This Court in *Kelly v. Smith*, 485 F2d 520, 525 (5th Cir. 1973) outlined four factors which may be considered in determining the existence of a substantial maritime relationship: (i) The functions and roles of the parties; (ii) the types of vehicles and instrumentalities involved; (iii) the causation and type of injury; and (iv) traditional concepts of the role of admiralty law. Upon consideration of each of these factors, we are unable to say that the circumstances surrounding the incident which gave rise to this action had a substantial maritime relationship.

[4] Factor (i) under *Kelly* is the functions and roles of the parties. The two principal parties involved in this case are Coastal and Sohyde. At the time of this incident, Coastal was the operator of the gas well, and its basic function was to obtain production from the well. Sohyde was a contractor whose function was to perform workover operations on the well to correct loss of pro-

---

4 At least three Federal District Courts and one noteworthy treatise have reached this same conclusion. See *Jorsch v. LeBeau*, 449 F.Supp. 485, 487 (N.D.Ill., 1978); *Roberts v. Grammer*, 432 F.Supp. 16, 18 (E.D.Tenn. 1977); *Complaint of Cook Transportation System, Inc.*, 431 F.Supp. 437, 442 (W.D.Tenn. 1976). *See also* 7A Moore's Federal Practice (2nd ed.) ¶.325[4] n. 30 (Supp.): "The face that a vessel causes shore-inflicted harm is not itself sufficient to trigger application of the Extension of Admiralty Jurisdiction Act. There must, additionally, be some maritime nexus."

duction. The functions and roles of these parties was hardly of a peculiarly maritime nature.

Factor (ii) under *Kelly*, the vehicles and instrumentalities involved, gives us somewhat greater pause. The "vehicle" involved in this case was a submersible drilling barge which, at the time of the well blowout, was resting on the bottom of an eight foot deep canal. There seems little doubt that if the present action were one for personal injuries under the Jones Act or maritime law sustained by one having the status of a *Robison* seaman that the drilling barge, even in its submerged position, would be considered a "vessel" for purposes of the Act. *See, Offshore Co. v. Robison*, 266 F.2d 769, 779, 1959 A.M.C. 2049 (5th Cir. 1959); *Producers Drilling Company v. Gray*, 361 F.2d 432, 434 (5th Cir. 1966). However, we are not convinced that the term "vessel" for Jones Act purposes, which is subject to liberal construction consistent with the purposes of the Act, is necessarily a vessel for other purposes as well.[5] At any rate, we believe that even though a structure

---

5 Certain language in *Robison* suggests that the term "vessel" is given particularly liberal construction under the Jones Act and thus that a "Jones Act vessel" might not necessarily be a "vessel" for other purposes:

> The [Jones] Act has always been construed liberally, but recent decisions have expanded the coverage of the Jones Act to include almost any workman sustaining almost any injury while employed on almost any structure that once floated or is capable of floating on navigable waters.

266F.2d at 771.

* * * * *

> . . . under the Jones Act a vessel may mean something more than a means of transport on water.

Id. at 776.

* * * * *

> Expansion of the terms 'seaman' and 'vessel' are consistent with the liberal construction the Act that has characterized it from the beginning and is consistent with its purposes.

Id. at 780. *See also* 7A *Moore's* at ¶.215[6]:

> When attempting to determine whether a structure is or is not a "vessel", within the scope of a particular statutory enactment, the underlying intent of the legislature should be ascertained, if at all feasible. Notwith-

may meet some abstract definition of "vessel" under certain circumstances, this is not necessarily dispositive of the issue of whether the structure has a substantial relationship to maritime activity at the time of the incident in question. With regard to the instant case, if prior to the well blowout Sinbad had been retrieved from Davey Jones' locker and placed on the deck of the Sohyde 28, it is doubtful that among the first words to leave his mouth would have been "weigh anchor". Although the Sohyde 28 may have had some maritime character at the time of the well blowout—in the sense that it floated in and presumably would float out—it clearly was not substantial.

As for the "instrumentalities" involved in this case, they were essentially the same as those involved in a land-based workover operation. The record is littered with references to blowout preventers (consisting of pipe rams, blind rams and hydrils), tubing, drilling mud, and the like. None of these instrumentalities have a peculiarly salty flavor.

---

standing that two statutes contain substantially similar definitions of the term vessel, what may reasonably qualify as a "vessel" for the purpose of one statute might well thwart the purpose of the other statute.

Id. at pp. 2432-33.

* * * * *

Thus, notwithstanding two statutes may contain substantially identical language or even both adopt the same statutory definition of "vessel," it is entirely conceivable that what may constitute a "vessel" for one purpose may well constitute a different type of structure for purposes of applying the other statute. In short, reason and legislative intent must prevail over a literal reading of the acts.

Id. at p. 2434.

The problem is also posed in determining whether a structure classed as a vessel for Jones Act purposes is a "vessel" for purposes of Limitation of Shipowner's Liability, 46 U.S.C.A. § 181, *et seq. See, In re United States Air Force Texas Tower No. 4*, 203 F. Supp. 215 (S.D.N.Y.1962).

Finally, for a review of cases in which courts have been forced to draw distinctions between terms which have different meanings depending on the federal statute or policy being invoked, *see Stevens v. Seacoast Company*, 414 F.2d 1032, 1039 n. 8 (5th Cir. 1969).

Factor (iii) under *Kelly*, the causation and type of injury, similarly has little maritime character. The District Court found among the causes of the well blowout were the failure of Sohyde to maintain proper mud levels during the process of changing rams on the blowout preventers, the failure of Sohyde to complete the ram change operations within a reasonable period of time under the prevailing emergency conditions, the failure of Sohyde to maintain its equipment in fit condition, and the failure of Coastal properly to supervise the operations. All of these causative factors could just as easily have occurred on land.

The injury occasioned in this case was merely a well blowout with attendant property damage and loss. The District Court awarded damages to Coastal for expenses incurred in attempting to control the well blowout, repairing surface facilities at the well, achieving partial production of reserves from a relief well, and plugging and abandoning the original well. The Court awarded additional damages for the value of gas which burned or escaped before the well was controlled and the value of gas lost in reserves which could have been produced. Damages of this type are indistinguishable from those arising from land-based well blowouts.

The final *Kelly* factor (iv), the traditional concept of the role of admiralty, similarly does not compel us to find a substantial maritime relationship in this case. As the Court stated in *Kelly:* "The admiralty jurisdiction of federal courts stems from the important national interest in uniformity of law and remedies for those facing the hazards of waterborne navigation." 485 F.2d at 526. This case, which involves a well blowout in a dead-end canal slip in Louisiana is simply not of such a character that leaving the parties to pursue state law remedies would disturb the federal interest of main-

taining uniformity of maritime law. Under the circumstances, we believe that the interests of federal-state comity would be best served by having this dispute resolved under state law.

Dispute Anchored In Louisiana

[5,6] Although we conclude that admiralty jurisdiction was improperly assumed in this case because of the lack of a substantial maritime relationship, we nevertheless remand this case for further proceedings by the District Court. The District Court's conclusion that the cause of the well blowout was 25% due to the negligence of Coastal was made in light of its erroneous conclusion that the maritime rule of comparative negligence controlled the case. Findings which are made under erroneous legal principles cannot be credited. *See Kirksey v. City of Jackson,* 625 F.2d 21, 21-22 (5th Cir. 1980); *NLRB v. Alterman Transport Lines,* 587 F.2d 212, 220 (5th Cir. 1979); *Theriault v. Silber,* 547 F.2d 1279, 1280 (5th Cir.), *cert. denied,* 434 U.S. 871, 98 S.Ct. 216, 54 L.Ed.2d 150 (1977); *Costello v. Lipsitz,* 547 F.2d 1267, 1276-77 (5th Cir.), *cert. denied,* 434 U.S. 829, 98 S.Ct. 109, 54 L.Ed.2d 88 (1977). Consequently, we are unable to say that the District Court would have reached the same conclusion if it had considered the case in light of the contributory negligence rule of Louisiana, and accordingly we deem remand to be appropriate.

By our remand, we make no intimations as to the appropriate allocation of fault by the District Court in this case, nor, even more fundamentally, as to whether Federal jurisdiction lies under some gound other than admiralty. furthermore, we not pass at this time on the question of whether Market's insurance policy covers

any liability which Sohyde might ultimately have to Coastal since there is at least a reasonable possibility that this question may be rendered moot by the liability decision, if any, of the District Court on remand.

VACATED AND REMANDED.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 78-2817

SOHYDE DRILLING & MARINE CO. and SOHYDE DRILLING & EXPLORATION CO., whose name has been changed to SPADE DRILLING & EXPLORATION CO.,
Plaintiffs,
versus
COASTAL STATES GAS PRODUCING CO.,
Defendant-3rd Party Plaintiff—Appellee,
versus
SOHYDE DRILLING & MARINE CO. and SOHYDE DRILLING & EXPLORATION CO., (Sohyde Drilling & Workovers, Inc.), name changed to Spade Drilling & Exploration Co.
3rd Party Defendants-Appellants,
THE TRAVELERS INSURANCE CO.,
3rd Party Defendant.

— — — — —

Appeal from the United States District Court for the Eastern District of Louisiana

— — — — —

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion May 14, 1981, 5 Cir., 1981, F.2d).

(JUNE 23, 1981)

Before BROWN, AINSWORTH and FRANK M. JOHNSON, Jr., Circuit Judges.

PER CURIAM:

(xx) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Apellate Procedure; Local Fifth Circuit Rule 16) the Suggestion for Rehearing En Banc DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ JOHN R. BROWN
United States Circuit Judge

Opposition

NO. 81-222

Office - Supreme Court, U.S.
FILED
NOV 5 1981
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

VALERO ENERGY CORPORATION, formerly
Coastal States Gas Producing Co.,
Petitioner

VERSUS

SOHYDE DRILLING & WORKOVER, INC.
and MARKET INSURANCE COMPANY,
Respondents

ON WRIT OF CERTIOTARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI

WILLIAM A. PORTEOUS, III
Porteous, Toledano, Hainkel &
JOHNSON
704 Carondelet Street
New Orleans, Louisiana 70130
Telpephone: (504) 581 - 3838
ATTORNEY FOR RESPONDENTS

STATEMENT OF ISSUES

1. Does the jurisdiction of a United States District Court under the Admiralty Extension Act require that the conduct at issue bear some relationship to traditicnal maritime activity?

2. Assuming admiralty jurisdiction over an oil well blow out, should substantive state law control the rights and liabilities of the parties?

TABLE OF CONTENTS

Page

Statement of Issues i

Table of Authorities iii

Syllabus 1

Argument 1

I. Workover Operations on a Gas Well Conducted From a Drilling Barge Resting on the Bed of a Deadend Private Canal Dredged in the Marsh Have No Significant Relationship to Traditional Maritime Activity and Are Beyond the Scope of Federal Admiralty Jurisdiction. State Law Should Control the Rights and Obligations Arising From the Blowout of Such a Gas Well 1

A. The Admiralty Extension Act Is Remedial Legislation 7

B. For Jurisdiction To Obtain Under the Admiralty Extension Act the Wrongful Conduct Complained of Must Meet the Requirements of *Executive Jet* 8

C. The Workover Barge Was Not a Vessel Upon Navigable Waters 9

II. Substantive Louisiana Law Should Control the Outcome of This Litigation Regardless of the Issue of Admiralty Jurisdiction 12

Conclusion 18

Certificate of Service 20

TABLE OF AUTHORITIES

Page

Cases:

Adams v. Montana 528 F.2d 437 (9th Cir. 1975) 14

Askew v. American Waterways Operators, Inc. 411 U.S. 325, 93 S. Ct. 1590 (1973) 16, 17

Chapman v. United States, 575 F.2d 147 (7th Cir. 1978) 4

Clinton Bd. of Park Com'rs. v. Claussen, 410 F.Supp. 320 (S.D. Iowa 1976) 14

Complaint of Cook Transportation System, Inc. 431 F. Supp. 437 (W. D. Tenn. 1976) 8

Crosson v. Vance, 484 F.2d 840 (4th Cir. 1973) 4

In re Dearbone Marine Service, Inc., 499 F.2d 263, reh. denied 515 F.2d 1061 (5th Cir. 1974) 12

Executive Jet Aviation, Inc. v. City of Cleveland, Ohio, 409, U.S. 249, 93 S.Ct. 493, 34 L.Ed. 2d 454 (1972) . . 2, 3, 4, 5, 6, 8, 12, 13, 16

Gebhard v. S. S. Hawaiian Legislator, 425 F.2d 1303 5

Gianfala v. Texas Co., 222 F.2d 382, *writ den.* 350 U.S. 879, 76 S. Ct. 141; reh. denied 350 U.S. 960, 76 S. Ct. 346 (5th Cir. 1955) 11

Jig the Third Corp. v. Puritan Marine Ins. Underwriters Corp., 519 F.2d 171 (5th Cir. 1975) 12

TABLE OF AUTHORITIES (Continued)

Page

Cases:

Jorsch v. LeBeau, 449 F.Supp. 485 (N. D. Ill. 1978) 8

Kelly v. Smith, 485 F.2d 520 (5th Cir. 1973) 6, 13

Louisiville & Nashville R. R. Co. v. Arrow Transportation Co., 170 F. Supp. 597 (N. D. Ala. 1959) 8

Louisiville & Nashville R. R. Co. v. M/V Bayou Lacombe, 597 F.2d 469 (5th Cir. 1979) 8

McKie v. Diamond Marine Co., 104 F. Supp. 275, reversed 204 F.2d 132 (5th Cir. 1953) 10

Michigan Mutual Liability Co. v. Arrien, 233 F. Supp. 496 (S. D. N. Y. 1964) 9

Nations v. Morris, 483 F.2d 577 (1973) 16

Offshore v. Robison, 266 F.2d 769 (5th Cir. 1959) 11

Peytavin v. Governmental Employees Ins. Co., 453 F.2d 1121 (5th Cir. 1972) 13

Producers Drilling Co. v. Gray, 361 F.2d 432 (5th Cir. 1966) 11

Richardson, et al., v. Foremost Insurance Co., 641 F.2d 314 (5th Cir. 1981) 4

Roberts v. Grammer, 432 F. Supp. 16 (E.D. Tenn. 1977).....8

TABLE OF AUTHORITIES (Continued)

Page

Cases:

Rodrigue v. Aetna Casualty & Surety Co., 395 U.S. 352 (1969) 9, 14, 16

St. Hilaire Moye v. Henderson, 496 F.2d 973 (8th Cir. 1974) 4, 5

Shell Oil Co., v. S. S. Tynemouth, 205 F.Supp. 838, vacated on other grounds, 211 F. Supp. 908 (E.D. La. 1962) 8

Sohyde Drilling & Marine Co., et al, v. Coastal States Gas Producing Company, 644 F.2d 314 (5th Cir. 1981) 2, 8, 11

Terra Resources, Inc. v. Atchafalaya Workers Contractors, Inc. 1980 AMC 1082 (E. D. La. 1978) 11

U.S. v. Matson Navigation Co., 201 F.2d 610 (9th Cir. 1953) 8

Victory Carriers, Inc. v. Law, 404 U.S. 202, 92 S. Ct. 418, 30 L. Ed. 2d 383 (1971) 9

Watz v. Zapata, 431 F.2d 100 (5th Cir. 1970) 12, 16

Others:

Admiralty Extension Act, 46 U.S.C. §740 ..... 7, 9, 18

Jones Act, 46 U.S.C. §688 11

TABLE OF AUTHORITIES (Continued)

Page

Benedict on Admiralty, 7th Ed. (rev.) 4

Boland and Dodd, Recent Developments in the Law of Maritime Torts 4

G. Gilmore & C. Black, The Law of Admiralty, 2d Ed. 2, 4

Moore's Federal Practice, 2d Ed. 9

Stoltz, Pleasure Boating & Admiralty: Erie at Sea 4

MAY IT PLEASE THE COURT:

ARGUMENT

I. WORKOVER OPERATIONS ON A GAS WELL CONDUCTED FROM A DRILLING BARGE RESTING ON THE BED OF A DEADEND PRIVATE CANAL DREDGED IN THE MARSH HAVE NO SIGNIFICANT RELATIONSHIP TO TRADITIONAL MARITIME ACTIVITY AND ARE BEYOND THE SCOPE OF FEDERAL ADMIRALTY JURISDICTION. STATE LAW SHOULD CONTROL THE RIGHTS AND OBLIGATIONS ARISING FROM THE BLOWOUT OF SUCH A GAS WELL.

Respondent sohyde Drilling and Workovers, Inc. ("Sohyde") was performing work-over operations on a high pressure gas well located in the marsh of southwest Louisiana. To reach the well, a deadend canal had been dredged to the well location. Thereafter, a steel deck barge had been floated to the location and sunk to the bottom. A work-over rig on the deck of the barge with its attendant machinery, including pumps, motors, tanks, rotaries, drill pipe, etc., was used to work-over the well which was many thousands of feet deep in the earth. From this shallow, deadend private canal, it was possible to navigate to the sea and barges did, from time to time, remove the product from this well and carry it by water to other locations. The well was but a stone's throw from the marsh.

The sunken barge resting on the bottom was a mere platform from which the work-over was being accomplished. The deck of the barge was the platform, or foundation, upon which the work-over rig rested. Otherwise, the operation was indistinguishable from those conducted throughout Louisiana, Texas, Oklahoma or any other land location in the world.

The trial of this case concerned mud weights, keeping the

hole full of mud, changing rams and blow-out preventers and a host of other tasks that are the concerns of those who drill oil wells. The trial measured the conduct of reasonable men engaged in oil drilling and work-over operations. It had nothing whatsoever to do with the conduct of seamen, or those who follow the sea.

The Court of Appeals for the Fifth Circuit correctly concluded that this activity did not have any significant relationship to maritime activity. ***Sohyde Drilling & Marine Company, et al., v. Coastal States Gas Producing Company***, 644 F.2d 1132 (5th Cir. 1981).

The Court's decision in ***Executive Aviation, Inc. v. Cleveland***, 409 U.S. 249, 93 S. Ct. 493, 34 L.Ed.2d 454 (1972), returned admiralty jurisdiction to its traditional scope. The Court emphasized the work "traditional". The Court said it would no longer follow the locality test because it allowed the application of admiralty law to torts "despite the lack of any connection between the wrong and traditional forms of maritime commerce and navigation." *Id*, 409 U.S. at 255. The thinking of the Court's reasoning was historically oriented and confined the scope of admiralty jurisdiction to its historic concerns. In reviewing the locality test for maritime jurisdiction, the Court held that if a wrong occurred on navigable waters the action was within admiralty jurisdiction. This old test was formulated when it was difficult to imagine tortious activity on navigable waters which did not involve waterborne vessels. 409 U.S. at 254. The Court cited Gilmore and Black in listing what it considered to be the "main business" of admiralty, which were claims for "cargo damage, collision, seamen's injuries and the like." See G. Gilmore and C. Black, The Law of Admiralty, 26 n. 88 (1975). The Court noted, however, that the locality test was inadequate when applied to new forms of water-related activities. *Id.* 409 U.S. at 255. In ***executive Jet*** an airplane crashed into Lake Erie and this did not form one of those traditional concerns of the admiralty. The Court further

cited absurd examples of where admiralty jurisdiction was invoked under the locality rule for accidents occurring to swimmers and to machinery accidentally dropped off land.

The Court announced that the locality test should no longer control because it allowed the application of admiralty law to torts "despite the lack of any connection between the wrong and traditional forms of maritime commerce and navigation." *Id.*, 255-56. The Court formulated a new standard, declaring that admiralty jurisdiction could not be invoked unless "the wrong (bore) a significant relationship to traditional maritime activities." 409 U.S. at 268. The rationale of this test was explained in depth by the Court:

> "The law of admiralty has evolved over many centuries, designed and molded to handle problems of vessels relegated to ply the waterways of the world, beyond whose shores they cannot go. ***That law deals with navigational rules — rules that govern the manner and direction those vessels may rightly move upon the waters.*** When a collision occurs or a ship founders at sea, the law of admiralty looks to those rules to determine fault, liability, and all other questions that may arise from such a catastrophe. Through long experience, the law of the sea knows how to determine whether a particular ship is seaworthy, and it knows the nature of maintenance and cure. It is concerned with maritime liens, the general average, captures and prizes, limitation of liability, cargo damage, and claims for salvage."
> (Emphasis supplied)
>
> *Id.* at 269-70.

The federal courts have experienced difficulty in the application of the *Executive Jet* principle to a number of matters which largely center about pleasure boats accidents. This term

the Court has granted review of *Richardson, et al., v. Foremost Insurance Company*, 541 F.2d 314 (5th Cir. 1981) as No. 80-2134. In that matter, two non-commercial pleasure boats had a collision on the upper reaches of the Amite River in Louisiana. The vessels were non-commercial. The Fifth Circuit, in reversing the district court, concluded that because the "Rules of the Road were involved", the matter was a concern for admiralty. The Fifth Circuit noted that there was no requirement that commercial activity be involved in the pleasure boat situation. The Fifth Circuit indicated that the Fourth Circuit is contrary to its position in *Crosson v. Vance*, 484 F. 2d 840 (4th Cir. 1973), and the Eighth Circuit in *St. Hilaire Moye v. Henderson*, 496 F.2d 973 (8th Cir. 1974), would extend jruisdiction to a pleasure boating accident regardless of the lack of commercial activity. The Court then noted that in the Seventh Circuit in the case of *Chapman v. United States*, 575 F.2d 147 (7th Cir. 1978), a pleasure boating accident was not covered by admiralty jurisdiction because a once-navigable waterway had been used only for recreational activities.

The district court in *Richardson v. Foremost Insurance Companu*, 470 F. Supp. 699 (M.D.La. 1979), read *Executive Jet* in a manner similar to that espoused by respondents herein. The district court looked to the substance of what was involved in the pleasure boating incident and concluded that it had nothing to do with the shipping industry and important concerns of the maritime world. The district court cited Gilmore & Black, The Law of Admiralty, 2d Ed., pp. 27, 28, 29-31; Benedict on Admiralty, 7th Ed. (revised), Section 127, pp. 8-47 through 8-49; Recent Developments in the Law of Maritime Torts, edited by Boland and Dodd, pp. 22-26 (1972); and Stoltz, Pleasure Boating and Admiralty: Erie at Sea, 51 Cal. L.R. 661.

Indeed, where there is no maritime commerce, there should be no admiralty jurisdiction. In the blow-out of a high pressure gas well from a depth of approximately 13,000 feet there is no maritime commerce.

Petitioner in this case claims that the Fifth Circuit decision conflicts with *St. Hilaire Moye v. Henderson, supra,* and *Gebhard v. S.S. Hawaiian Legislator,* 425 F.2d 1303. The Eighth Circuit in *St. Hilaire Moye, supra,* applied admiralty. A high speed pleasure boat was suddenly thrown into reverse by an intoxicated operator, causing a passenger aboard the vessel to be thrown overboard and hurt by the propeller. The court found jurisdiction present. Clearly, a vessel was involved; it was operating on navigable water; and the conduct of a mariner was involved. The boat, however, was not commercial.

In *Gebhard v. S. S. Hawaiian Legislator,* 425 F.2d 1303 (9th Cir. 1970), an injured longshoreman was allowed to recover under the admiralty jurisdiction of the court in an action against the ship because allegedly negligently-operated equipment was used ashore to load the vessel and this equipment caused him injury while on the dock. The important thing to note is that an ocean going vessel was involved and the plaintiff himself was doing the work of a seaman. Issues of seaworthiness, safe stevedoring activities and maritime negligence were at issue in the *Hawaiian Legislator.*

The quandary created by these cases occurs because of the requirement that there be some connexity with "maritime commerce and navigation" or "maritime activities". The quandary is further extended because of the use of the word "traditional" in the Court's *Executive Jet* decision.

The lower federal courts have failed to appreciate the historical emphasis of the word "traditional" as used by the Court in *Executive Jet, supra.* The lower courts have failed to take into account the emphasis of the Court upon the historic and traditional concerns of the admiralty. *Executive Jet* was a direction to the lower federal courts to the effect that admiralty jurisdiction should be confined to such matters as carriage of goods, charter party, general average, rights of seamen and maritime workers, collision, salvage, maritime liens and ship

mortgages, limitation of liability and the host of other matters concerned with the movement of persons and goods in the usual form of maritime commerce. The Court's opinion, because of its emphasis on tradition and history, meant that the federal courts should not utilize admiralty jurisdiction in accidents to swimmers or, for that matter, accidents involving the drilling of oil wells to great depths. The emphasis on tradition and history as a guide to admiralty jurisdiction curtails the extension of jurisdiction to matters with some proximity to water but with no real relationship to the substantive concerns of admiralty and maritime commerce.

The lower federal courts have had difficulty because they found some connexity between a wrong and the application of maritime law. Where pleasure boats are involved in an accident, there is the suggestion that the Rules of the Road control. Where rifle fire is directed from shore at persons on a commercial waterway, as in *Kelly v. Smith*, 485 F.2d 520 (5th Cir. 1973), there has been the thought that maritime commerce might be endangered. The hunters in *Kelly v. Smith, supra*, never considered themselves as seamen, or being concerned with maritime law. They slept in beds ashore, worked ashore and considered their lives generally regulated by shoreside law. The same is true of swimmers and pleasure boat operators. Thier conduct, while touching the marine world, has not been, and is not, part of the sum, substance and stuff of maritime law.

The direction of the Supreme Court in *Executive Jet* was that federal courts should not assume jurisdiction in those cases which are not traditionally and substantively historically maritime. Airplanes, pleasure boats and oil drilling operations are not traditionally, historically and substantively maritime concerns. Hence, this Court should not grant a writ in this case inasmuch as the matter is not historically, traditionally and substantively in any way a concern of the maritime law. It is truly a concern of only those involved in oil and gas

operations. This case involved the duties of drillers, tool pushers, petroleum engineers and the like. It was in no sense a maritime dispute.

For admiralty jurisdiction to attach for wrongful conduct, under the Admiralty Extension Act, the wrongful conduct complained of must bear some significant relationship to traditional maritime activities.

A. THE ADMIRALTY EXTENSION ACT WAS REMEDIAL LEGISLATION

The Admiralty Extension Act, 46 U.S.C. §740, provides "the admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury to person or property caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land."

A review of the history of the Admiralty Extension Act shows that it was intended to be purely remedial legislation. In the legislative history, we find the following from House Report No. 1523:

> "Adoption of the bill will not create new causes of action. It merely specifically directs the courts to exercise the admiralty and maritime jurisdiction of the United States already conferred by article III, section2, of the capital constitution and already authorized by the Judiciary Acts. Moreover, there will still remain available the right to a common-law remedy which the Judiciary Acts, 28 U.S. Code 41 (3) have expressly saved to claimants."
>
> 1948 U.S. Code Congressional and Administrative News 1900.

A review of the legislative history of the Act indicates

that it was intended only to remedy problems such as a bridge being damaged by a moving vessel or an innocent owner of property on land sustaining harm as the result of the fault of a compulsory pilot on board a vessel. The Act, according to the legislative history, in describing the purpose of the bill, was solely to give an admiralty action to land owners whose property was damaged by a vessel on navigable waters. 1948 U.S. Code Congressional and Administrative News 1899. The remedial purpose of the Act is reflected in ***Sohyde Drilling & Marine v. Coastal States Gas Producing Company***, 644 F.2d at 1135, 1136:***Louisiville & Nashville R. R. Company v. M/V Bayou Lacombe***, 597 F.2d 469 (5th Cir. 1979); ***U.S. v. Matson Navigation Co.***, 201 F.2d 610 (9th Cir. 1953); ***Shell Oil Co. v. S.S. Tynemouth***, 205 F.Supp. 838, vacated on other grounds, 211 F.Supp. 908 (E.D.La. 1962); ***Louisiville & Nashville R. R. Co. v. Arrow Transportation Co.***, 170 F.Supp. 597 (N.D. Ala. 1959).

B. FOR JURISDICTION TO OBTAIN UNDER THE ADMIRALTY EXTENSION ACT, THE WRONGFUL CONDUCT COMPLAINED OF MUST MEET THE REQUIREMENTS OF *EXECUTIVE JET*.

Since the Admiralty Extension Act is merely remedial legislation and creates no new cause of action, it is inextricably bound with the grant of admiralty and maritime jurisdiction to United States court. That jurisdiction as construed in ***Executive Jet*** controls matters brought under the Admiralty Extension Act. ***Sohyde Drilling & Marine v. Coastal States Gas Producing Company, supra***, 1135-1136. In ***Sohyde*** the Court notes that others have followed this thinking. ***Jorsch v. LeBeau***, 449 F. Supp. 485, 487 (N.D. Ill. 1978); ***Roberts v. Grammer***, 432 F.Supp. 16, 18 (E. D. Tenn. 1977); ***Complaint of Cook Transportation System, Inc.***, 431 F.Supp. 437, 442 (W.D. Tenn. 1976). The Fifth Circuit also cites Moore, wherein the statement is found: "The fact that a vessel causes shore-inflicted harm is not itself sufficient to trigger application of the

Extension of Admiralty Jurisdiction Act. There must, additionally, be some maritime nexus." 7A Moore's Federal Practice (2d. Ed.) Para. .325(4) n. 30 (Supp.).

C. THE WORKOVER BARGE WAS NOT A VESSEL UPON NAVIGABLE WATERS.

The Admiralty Extension Act requires that the wrongful wrong be caused by a vessel on navigable water. The drilling barge was not upon navigable water. It was sunk to the bottom of this deadend canal where it performed the function of being a platform from which workover operations were conducted. It was not functioning in any respect as a vessel at the time of the incident. The workover barge was out of navigation as much as any vessel in drydock might be out of navigation or because of her being hauled out on a marine railway.

The Longshoremen's Act and the Admiralty Extension Act both use the terminology "on navigable water". The two statutes are to be considered in *pari pasu*. *Michigan Mutual Liability Co. v. Arrien*, 233 F.Supp 496 (S.D. N.Y. 1964).

Prior to the 1872 amendments to the Longshoremen's Act, historically, where the longshoreman fell on the dock, although the dock was over navigable water, his injuries were not covered by the Compensation Act. See historical discussion *Victory Carriers v. Law*, 404 U.S. 202, 205-214, 92 S.Ct. 418, 30 L.Ed. 2d 383 (1971). By the same token, this vesse! at the time of the incident was not upon navigable waters. It was not afloat. It was resting on the bottom and performing the same function as any platform. It was in essence like any pier or dock or platform.

It is noteworthy that were this accident to have occurred offshore in federal water on a fixed platform driven into the bed of the Gulf, the matter would be controlled entirely by state law pursuant to *Rodrigue v. Aetna Casualty & Surety*

Company, 395 U.S. 352 (1969). A further consideration in this matter is whether or not so-called navigable water is involved in this litigation. It should not be forgotten that the accident herein happened in a dredged-out slip in the Tigre Lagoon oilfield. The Coast and Geodetic Survey charts show the entire area as being marsh. The canal was dredged into this location for the purpose of sinking oil wells and for the purpose of giving easy access to the wells. The slip is not on a main thoroughfare or artery of commerce. It is possible, however, through various channels, most of them being dredged, to reach the Intracoastal Waterway. The only vessels using the canal are directly concerned with the servicing of the well. Under these circumstances it is further submitted that the slip is not part of the navigable waters of the United States.

A dredge moving in such a slip and dredging it out was held not to be in navigable waters of the United States in *McKie v. Diamond Marine Co.*, 104 F.Supp. 275, reversed 204 F.2d 132 (S.D. Tex. 1952). In its reversal, the Fifth Circuit did not discuss what would constitute a navigable stream but the court did say that the matter was of such a local character and not related to navigation so as to bring employees within the admiralty jurisdiction. The Fifth Circuit stated:

> "The court below further found as a fact that the dredge was cutting a new channel and having so found, and in keeping with the decisions of this court, concluded that work of this local character was not so related to navigation as to bring employees while engaged in it under admiralty jurisdiction, but that the state's workmen's compensation act provided the exclusive remedy. *Fuentes v. Gulf Coast Dredging Co.*, 5 Cir., 54 F.2d 69; *United Dredging Co. v. Lindberg*, 5 Cir., 18 F.2d 453; see *Kibadeaux v. Standard Dredging Co.*, 5 Cir., 81 F.2d 670, 672."
>
> *McKie v. Diamond Marine Co.*,
> 204 F.2d 132, 135 (5th Cir. 1953).

Quite clearly, the sunken drilling barge was not a vessel and the dredged out canal was not navigable water in the sense that those terms are normally considered with respect to traditional maritime commerce.

The suggestion has been made that not recognizing a workover barge as a vessel does damage to the Jones Act rights of injured seamen.

The Jones Act, 46 U.S.C. 688, is a special act protecting the rights of seamen. It is humanitarian and it is to be construed broadly. The Fifth Circuit recognized this in *Sohyde Drilling & Marine v. Coastal States Gas Producing Co., supra,* at 1136-1137. Under *Offshore v. Robison*, 266 F.2d 769 (5th Cir. 1959), and *Producers Drilling Co. v. Gray*, 361 F.2d 432 (5th Cir. 1966), the term is accorded a broad meaning. This is consonant, of course, with *Gianfala v. Texas Co.*, 222 F.2d 382, writ denied 350 U.S. 879, 76 S. Ct. 141; rehearing denied, 350 U.S. 960, 76 S. Ct. 346 (5th Cir. 1955). It is further noteworthy that the Admiralty Extension Act specifically in its history notes that nothing contained therein shall in any way affect existing rights of seamen against their vessels. 1948 U.S. Code Congressional & Administrative News 1899. Finally, petitioners raise the matter of *Terra Resources Inc. v. Atchafalaya Workover Contractors, Inc.*, 1980 AMC 1082 (E.D.La. 1978).

That matter occurred out on the Outer Continental Shelf in Block 35 of Breton Sound off the coast of Louisiana in federal water. Although the district judge does not cite the *Sohyde* case, counsel argued the *Sohyde* case in its original district court decision to Judge Duplantier.

The fact that the *Terra Resources* blowout occurred out in federal water and outside the state of Louisiana offshore makes it decidedly different from the deadend, dredged out canal in which the *Sohyde* matter occurred.

II. SUBSTANTIVE LOUISIANA LAW SHOULD CONTROL THE OUTCOME OF THIS LITIGATION REGARDLESS OF THE ISSUE OF ADMIRALTY JURISDICTION.

The issue at the heart of this litigation is choice of law. Should substantive admiralty law or Louisiana substantive law control the result in this case? Alternatively, accepting admiralty jurisdiction, does substantive state law or federal maritime law control the result?

> "*Executive Jet*, of course, was more concerned with admiralty jurisdiction than with the question of what was applicable. As we have noted, however:
>
> > Choice of law questions raised in a maritime context have traditionally been analyzed in jurisdictional terms . . . because as a general rule '(o)nce admiralty jurisdiction is established, then all of the substantive rules and precepts peculiar to the law of the sea become applicable."
>
> *In re Dearborn Marine Service, Inc.*, 499 F.2d 263, 277 n. 27, reh. denied, 512 F.2d 1061 (5th Cir. 1974).

Judge Golbert, citing *Watz v. Zapata*, said in *Jig The Third Corp. v. Puritan Marine Ins. Underwriters Corp.*, 519 F.2d 171 (5th Cir. 1975) at 174:

> Of course, under certain circumstances and on familiar conflicts principles, a court applying the general maritime law might look to the law of a particular state when that state has strong contacts with the parties or other legitimate interests. This would be especially appropriate when the relationship of the allegedly tortious behavior to traditional maritime behavior is enough to confer admiralty jurisdiction but is, in the main, slight.

The rejection of the substantive maritime law occurred in ***Paytavin v. Governmental Employees Insurance Co.***, 453 F.2d 1121 (5th Cir. 1972). The plaintiff in that case sued in admiralty for whiplash injuries that resulted when one car struck another while on a pontoon waiting to board a ferry. The court found that there was minimum maritime connection since the accident had occurred on a navigable river and involved a vessel-like pontoon, but, nevertheless, declined to invoke admiralty jurisdiction. The reason being that although the parties were engaged in "the use of facilities which are connected with maritime commerce at the time of the accident . . . neither the parties, nor the nature or the apparent cause of the accident nor the injury sustained demonstrated any further connection with maritime activities or interests. *Id.* at 1126-27.

After reviewing and analyzing ***Executive Jet*** and ***Paytavin***, the Fifth Circuit Court of Appeals in ***Kelly v. Smith***, 485 F.2d 520 (5th Cir. 1973), formulated the following factors to be weighed in determining admiralty jurisdiction and presumably choice of substantive law:

> ". . . the functions and roled of the parties; the types of vehicles and instrumentalities involved; the causation and the type of injury; and traditional concepts of the role of admiralty law. . ."
>
> *Id.* at 525.

The Fifth Circuit went on to note that the:

> ". . . facts and circumstance of ***each claim*** must have a substantial connection with maritime activities and interest in order to invoke the admiralty jurisdiction of the federal courts . . ."
>
> (Emphasis added) *Id.* at 524.

Other courts have heeded the directive of ***Executive Jet***

to more closely analyze admiralty claims and to determine whether admiralty law is needed to protect maritime interests. In *Adams v. Montana*, 354 F.Supp. 1111 (D. Mont. 1973), the district court held that activities of swimmers, boaters, water skiers and fishermen on Montana waters where no traditional maritime activities were conducted should be regulated by state law. On appeal, the decision was affirmed with the Appeals Court adding that the purpose of admiralty jurisdiction was for the protection and promotion of the maritime shipping industry through the development of a uniform and specialized body of law by neutral federal courts. *Adams v. Montana*, 528 F.2d 437, 439 (9th Cir. 1975). Accord: *Crosson v. Vance*, 484 F.2d 840 (4th Cir. 1973). Such a body of law was not considered appropriate for drowning deaths on the navigable Missouri River. *Adams*, *supra*, reflects a realization that admiralty law should supplement local law only if policies underlying admiralty law are enhanced or fulfilled by its application. See *Clinton Bd. of Park Com'rs. v. Claussen*, 410 F.Supp. 320 (S.D. Iowa 1976).

Although the workover operation in the present case occurred on a navigable waterway and involved a submersible drilling barge, it is submitted that workover operations, *per se*, have no significant connections with traditional maritime activities and maritime law. Local Louisiana substantive law should control as to whether the workover operation was done negligently since admiralty law has little expertise in this area and, further, because no admiralty policies are involved.

The above argument finds support in the United States Supreme Court decision of *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969). Although the Outer Continental Lands Act ("Lands Act") was applicable since a fixed oil platform off the coast of Louisiana was involved, language in the opinion strongly suggests that oil drilling operations were not a proper subject for maritime jurisdiction. In reviewing the legislative history of the Lands Act, the Court noted

that the "committee was acutely aware of the inaptness of admiralty law" for stationary structures on the Continental Shelf. *Id.* at 363-65. The artificial islands involved, just like any rig in open water, were not erected as navigational aids and incidents which occurred pursuant to drilling operations bore no relation to such function. *Id.* at 359-60. Moreover, these artificial islands and the accidents that occurred on them "had no more connection with the ordinary stuff of admiralty than do accidents on piers." *Id.* at 360.

What is argued to this Court is that submersible rigs resting on the bottom should be treated the same as fixed platforms out in the Gulf in regard to the question of whether actual drilling operations are performed negligently.

This litigation involved an obscure Louisiana dredged canal. Historically, the canal was not part of the constitutional maritime jurisdiction. A converted drilling barge was sunk to the bottom in this deadend canal. There were no running lights, no anchor, balls, no watches were maintained, as would have suggested a regular maritime situation. A workover barge in a deadend canal was reworking a high pressure gas well. The vessel was on the bottom in a 120 foot wide canal and had the canal not been dredged, a land rig might have done the job.

The reworking of the well involved mud weight, refilling of tubing, rams, blowout preventers, time for installation of rams and blowout preventers, supervision of the installations of rams and blowout preventers, kicking wells, selection of mud weights, bottom hole pressures in an oil well, tubing problems, communication between zones of production, a blowout, relations between a drilling contractor and an owner of a well, a service contract between an owner of a well and an operator without any interest in the vessel concerned. This is the substance of the oil field, be it onshore, be it offshore, be it anywhere in the world. The fault adjudged on the part of both parties is fault that is basically and historically ***land*** fault.

Nothing in the law of admiralty concerns mud weights, supervision of an operator or a drilling contractor, a mud program, a watch on the mud in the hold, kicks and blowouts, and rams and blowout preventers. Historically, this was not part of maritime commerce and, while maritime commerce might embrace anything that happened on waters, it does not necessarily call for the application of maritime substantive legal principles.

While admiralty jurisdiction might pertain from a strict test of locality, the substantive law applicable is not admiralty but is rather that of the adjoining State. Furthermore, admiralty's requirement of uniformity is of no moment. Admiralty is not concerned with uniformity in the law of oil and gas.

Judge Brown in *Nations v. Morris*, 483 F.2d 577 (1973), suggests that something more than locality is required to determine choice of substantive law. Judge Brown at 483 F.2d 585, Footnote 27, states:

> But some may suspect that the Court's use of *Rodrigue* (see 409 U.S. at 258, 259, 93 S. Ct. 493) may have significant bearing on whether activities which up to *Executive Jet* satisfied the admiralty locality test are any longer maritime or will give rise to maritime jurisdiction or substantive principles.

In *Watz v. Zapata*, 431 F.2d 100 (5th Cir. 1970) at 112-113, Judge Wisdom rejected any mechanistic application of maritime substantive law based on locality alone where there existed a significant relationship with a particular state.

Askew v. American Waterways Operators, Inc., 411 U.S. 325, 93 S. Ct. 1950 (1973), involved the application of the substantive law of Florida in what would be a matter under the Admiralty Extension Act. The Court permitted and upheld

the Florida substantive law in opposition to the general maritime law.

Florida had enacted a pollution control statute awarding the state costs of cleanup and imposing strict or no-fault liability on vessels polluting Florida waterways. The Florida act imposed liability without fault yet the general maritime law, which otherwise would have been applicable, required proof of fault, Mr. Justice Douglas indicated that in the admiralty area state law is permissible absent a clear conflict with federal law. The Court noted that the Admiralty Extension Act did not preempt state law or supply any exclusive remedy. The Court inquired whether the substantive nature of admiralty preempted state law. Answering the query in the negative, the Court confined admiralty to suits relating to the relationship of vessels plying the high seas, navigable waters and their crews. Where shoreside injuries by ships on navigable waters are concerned, the Admiralty Extension Act and *Jensen* do not preempt the application of state law in these situations. In *Askew*, which was a pollution case, the substantive law of Florida was upheld and the traditional concepts of admiralty found inapplicable.

CONCLUSION

The workover operations which were at the heart of this litigation are not historically and traditionally matters of admiralty concern. Therefore, there exists no jurisdiction under the admiralty and maritime jurisdiction of the federal courts. The Admiralty Extension Act does not braoden the concept of maritime jurisdiction; it only extended the jurisdiction of the court to those admiralty concerns where damage was consummated on land. Finally, even if a basis exists for admiralty jurisdiction, the proper law which should control this dispute is the state law of Louisiana.

Respectfully submitted,

William A. Porteous, III per mas.

WILLIAM A. PORTEOUS, III
Porteous, Toledano, Hainkel & Johnson
704 Carondelet Street
New Orleans, Louisiana 70130
Telephone: (504) 581 - 3838
Attorney for Respondents
Sohyde Drilling & Workover, Inc.
and Market Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Brief for Respondents in Opposition to a Petition for a Writ of Certiorari has been served upon Benjamin R. Slater, Jr., Esq. and William J. Hamlin, Esq., Monore & Lemann, 1424 Whitney Building, New Orleans, La. 70130, by depositing same in the U.S. Mails, postage prepaid and addressed as above. this 5th day of November, 1981.

William A. Porteous, III

WILLIAM A. PORTEOUS, III